

Complaint against the Government of the Republic of Korea presented by

- **the Korean Confederation of Trade Unions (KCTU) and**
- **the International Trade Union Confederation (ITUC)**

Allegations: The complainants allege that the Government refused to register the Migrants' Trade Union (MTU) and carried out a targeted crackdown on this union by successively arresting its Presidents Anwar Hossain, Kajiman Khapung and Toran Limbu, Vice-Presidents Raj Kumar Gurung (Raju) and Abdus Sabur and General Secretary Abul Basher Moniruzzaman (Masum), and subsequently deporting many of them. The complainants add that this has taken place against a background of generalized discrimination against migrant workers geared to create a low-wage labour force that is easy to exploit

- 573.** The Committee last examined this case on its merits at its November 2010 meeting where it issued an interim report, approved by the Governing Body at its 309th Session [see 358th Report, paras 447–461].
- 574.** The Korean Confederation of Trade Unions (KCTU) provided new allegations in a communication dated 7 December 2010 and 28 September 2011.
- 575.** The Government provided partial observations in communications dated 14 January, and 30 August and 4 October 2011.
- 576.** The Republic of Korea has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 577.** At its November 2010 meeting, the Committee made the following recommendations [see 358th Report, para. 461]:
- (a) The Committee once again urges the Government to proceed with the MTU's registration without delay and to ensure that national decisions concerning the MTU's application for registration recognize the principle that all workers may be guaranteed the full exercise of their freedom of association rights. Furthermore it once again requests the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration and to provide a copy of the Supreme Court's decision once it is handed down.

- (b) The Committee once again requests the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee requests to be kept informed of the progress made in this regard.

B. Additional information submitted by the complainants

- 578.** In communications dated 7 December 2010 and 28 September 2011, the KCTU sent new information in relation to the situation of the current President of the MTU, Mr Michel Catuira. According to the complainant, Mr Catuira has served as President of the MTU since 2008. The complainant states that in these functions, Mr Catuira has been at the forefront of work to address violations of the rights of migrants and has spoken out against restrictions established under the Employment Permit System (EPS), including by vocally criticizing the government's policy of immigration raids and the deportation of undocumented migrant workers. The complainant further indicates that Mr Catuira came to South Korea as a migrant worker in 2006 and always maintained an employment relationship with a registered employer as required under the EPS. The complainant states that in March 2010, Mr Catuira followed the legally required procedures to be hired in a new company but soon after his hire, the company fell on hard times and there was little work for him to do. In July 2010, while the MTU carried out a sit-in protest against the G20-related crackdown, the Ministry of Employment and Labour East Seoul Office called Mr Catuira and his employer to the center to be questioned concerning suspicions about the validity of their employment relationship. According to the complainant, the center did not find any legal problem but continued to pressure President Catuira through his employer.
- 579.** The complainant states that on 23 November 2010, Mr Catuira received a summons from the Seoul Immigration Service to appear before a special investigation team to be questioned based on "suspicion of violations of the Immigration Control Act in the course of applying for a workplace transfer and with relation to actual performance of work duties at present". An MTU lawyer was told in response to his inquiries that the investigation concerned violations of provisions of the Immigration Control Act (ICA), including article 17 which prohibits foreigners from engaging in political activities. Mr Catuira received a second summons on 6 December and appeared before the investigation team on 22 December. Mr Catuira was questioned in detail in relation to his employment. There was no mention of article 17 according to the complainant, but the immigration office claimed that Mr Catuira's workplace did not exist and that Mr Catuira's visa may be revoked under article 89(1) of the ICA. In the meantime, the Ministry of Employment and Labour East Seoul Office sent a notice revoking the permit to employ foreign workers of Mr Catuira's employer due to lack of sufficient need. The complainant further states that, on 10 and 14 February 2011, the Seoul Immigration Service notified Mr Catuira and his lawyer that "permission for extension of stay" (his residence permit) had been cancelled and that an order for him to leave the country by 7 March had been issued. Mr Catuira's lawyer filed an administrative suit against the Seoul Immigration Service's actions and a petition for an injunction to stop the execution of all punitive immigration measures until the trial was complete. On 2 March 2011, the Seoul 12th Administrative Court granted the injunction and, according to the complainant, stated that suspension of these measures was "urgently necessary to prevent damages difficult to correct".

580. The complainant further states that Mr Catuira had to look for another employer before the expiration date of his employment contract on 7 March 2011, as under the EPS, migrant workers' residence permits are dependent on their being employed. Extension of residence permits for EPS workers during this period of job-hunting is routine and usually granted on the day on which it is applied for according to the complainant who, however, indicates that Mr Catuira's application dated 4 March was denied on March 17, on the grounds that he had used "dishonest means" to obtain his permit. The complainant states that the Immigration Service then ordered Mr Catuira to leave South Korea by 31 March. On 22 March, Mr Catuira applied for another type of visa which is normally granted to foreigners who are involved in legal proceedings, undergoing medical treatment or, for other humanitarian reasons but was notified of the denial of his application on 29 March.

581. The complainant indicates that, on 15 September 2011, the Seoul 12th Administrative Court issued a verdict in favour of Mr Catuira ordering the cancellation of all punitive immigration measures taken by the Seoul Immigration Service against him, including the cancellation of his "permission to transfer workplaces", "permission for extension of stay" (resident permit) and "order to leave the country" on 10 February 2011, as well as the "denial of application for extension of the residence period" and "notice of requirement to leave the country" taken on 17 March after the Court injunction was issued. According to the complainant the Court explicitly recognized the rights of migrant workers to form and participate in labour unions as protected under the Constitution and international law and ruled that "based on the protection provided to foreigners under article 6 of the Constitution ... [and under provisions of multiple international human rights conventions] ... it is correct to understand the basic rights enjoyed by workers including the rights to association and collective action, etc., as applying to migrant workers who are incorporated into South Korean society as well". According to the complainant, the Court also stated that in light of the Seoul Immigration Service's deportation of MTU officers in the past, "it is suspected that the [immigration measures taken against Mr Catuira] were taken, not for the ostensible reason given, but, in fact, because of the plaintiff's activities as chief of the migrant trade union". The complainant further indicates that the Court held, contrary to the Seoul Immigration Service's claims, that the company where Mr Catuira had been employed did in fact exist and that "there is no evidence worthy of note to suggest that [Mr Catuira] obtained his permits in a false or otherwise unlawful manner ... the Seoul Immigration Service's measures against Catuira were unlawful".

582. According to the complainant, on 16 September 2011, the day after the Court issued its decision, Mr Catuira went to the Seoul Immigration Service Office to renew his residence permit but, despite the clear ruling of the Court, the Immigration Service refused the renewal, saying that it planned to wait until the outcome of its appeal of the verdict. The complainant alleges that this is a clear refusal to enact the Court's decision and expresses its firm belief that, particularly in light of the past targeting of MTU officers, punitive immigration measures taken against Mr Catuira are part of an attempt to weaken the MTU by penalizing its officers.

C. The Government's reply

583. In a communication of 14 January 2011, the Government stated that the Ministry of Employment and Labour conducted an investigation on Mr Catuira to verify the validity of his visa status pursuant to the Act on the Employment of Foreign Workers and the Immigration Control Act, which is independent and irrespective of his union activities. According to the Government, the decision to verify the visa status of Mr Catuira was made because it was deemed that Mr Catuira did not maintain a legitimate employment relation with his employer named on the submitted visa document, as required under the visa for Non-Professional Employment (E-9) granted to Mr Catuira under the Government's EPS. The Government indicates that the business establishment that

Mr Catuira belonged to, and was supposed to work for, was not in operation and that from March to December 2010, Mr Catuira's actual working days translated to a total of 2-3 days.

- 584.** In July 2010, after being informed of the dubious employment relation concerning Mr Catuira at a virtually inoperative workplace, the East Seoul Job Centre arranged an interview with Mr Catuira and his employer to genuinely conduct fact-finding without prejudice. During the interview, both of them stated that the employment contract was signed back in March 2010, and the business had been suspended since May 2010 due to financial difficulties. The Government points out that its investigation found no evidence that attests to the entity as a workplace such as, an emblem and production facilities and that, instead, an education facility was located at the stated address of the workplace. It states that all pointed to slim chances of resuming business and it was construed that Mr Catuira was engaged in an employment contract in paper and name alone but was not in actual service. The Government indicates that, based on these findings, the East Seoul Job Centre informed Mr Catuira that he could select a new "fully operative" workplace of his own choice and enter into an employment contract with the new employer to maintain his visa status. On 1 December 2010, the Ministry of Employment and Labour revoked his employer's employment permit in accordance with the Act on the Employment of Foreign Workers and concluded that Mr Catuira's employment status was in violation of the purpose of the EPS. On 6 January 2011, Mr Catuira appeared at the East Seoul Job Centre to apply for a workplace transfer and was provided with references of suitable workplaces.
- 585.** The Government further states that, apart from the investigation of the Ministry of Employment and Labour, the Immigration Service summoned Mr Catuira on 23 November 2010 to appear before the Seoul Immigration Office to investigate the validity of his legal residence in the Republic of Korea in accordance with article 81 of the Immigration Control Act which stipulates that immigration control officers may ask any question or demand to present necessary materials to foreigners, the foreigners' employers and other relevant parties, in order to investigate whether or not any foreigner sojourns lawfully pursuant to the Act and any order issued under the Act. On 21 December 2010, the Immigration Service interviewed Mr Catuira who stated in his deposition that his actual workload was much lighter than expected, making him engaged in actual work only for two to three days during his overall claimed employment period. In its communication dated 4 October 2011, the Government indicates that the investigation of the Immigration Service on the legitimacy of Mr Catuira's activities during his alleged employment period within the specified scope of his E-9 visa status resulted in the cancellation of his sojourn extension permit and of his workplace change permit on 10 February 2011. Mr Catuira was accordingly ordered to leave the country by 7 March 2011 at that time. The Government adds that, following Mr Catuira's appeal of the decision of the Immigration Office and the Court's granting, on 2 March 2011, of a suspension of the immigration measures, the Seoul Immigration Office rejected his application for re-extension of stay on 7 March for the reason that "Mr Catuira violated the Immigration Control Act by obtaining the sojourn permit using illegitimate means (...)." Mr Catuira also filed a case against this decision and on 15 September 2011, the Seoul Administrative Court handed down its ruling that given the fact that the business existed at the time when the sojourn extension permit and the workplace change permit were granted in March 2010, it cannot be construed that the permits were obtained by illegitimate means, and therefore all of the decisions of the Seoul Immigration Office should be cancelled. The Government states that the Immigration Office plans to appeal against the court's decision and that it will, together with the Job Center, proceed in accordance with the court's final ruling and related laws.

- 586.** The Government affirms that the investigations and interviews conducted were legitimate measures taken by a sovereign state to ensure compliance of its immigration laws, irrelevant of freedom of association, and were not intended to suppress the MTU or to deport Mr Catuira.
- 587.** In a communication dated 30 August 2011, the Government further indicates that the Supreme Court is yet to hand down its decision on the case which has been pending since 23 February 2007. The Government, as the defendant of the case, has made every effort to assist the Supreme Court to make a decision based on sufficient information by submitting supplementary reports explaining its reasons for appeal. The Government, as well as the MTU, the CFA, employers' and workers' organizations at home and abroad, expect the decision to be handed down as soon as possible.
- 588.** Meanwhile, the Government explains that foreign workers with a valid working visa are granted the same labour rights as Korean citizens including the right to establish a trade union and the right to collective bargaining, as mentioned in the previous observations provided by the Korean Government. Currently, there are three trade unions established by foreign workers in the Republic of Korea, including one that was set up on 25 February 2011 by six foreign English teachers in Gwangju who submitted a union establishment report and received the union establishment certificate from the Government.
- 589.** The Korean Government is making continuous efforts to protect the working conditions and ensure the rights and interests of foreign workers. In an effort to eradicate violations of foreign workers' human rights, an additional number of support centres for foreign workers has been set up in areas densely populated by foreign workers, counselling centres for foreign workers have been newly established, inspections of workplaces on violations of working conditions and illegal employment have been conducted, and training for employers and workers to help foreign workers adapt to the workplace have been provided. On 1 July 2011, the Government opened a counselling centre for foreign workers, where they can get counselling on labour problems in their mother tongues. At present, counselling services are available in ten languages among the 15 countries that send workers to the Republic of Korea under the EPS, and the Government plans to continuously expand the number of available languages and counsellors.
- 590.** In addition, the Government is providing pre-employment training to new foreign workers, workplace adaptation training to those who changed workplaces, and training to employers who hire foreign workers in order to enhance the understanding of the employers and foreign workers on the Act on Foreign Workers' Employment and other related labour laws. The Government continuously conducts inspections on workplaces that hire foreign workers through the EPS. During the period of May to June 2011, the Government conducted inspections on 1,800 workplaces with regard to their compliance to the Labour Standards Act as well as rules and regulations concerning the EPS.

D. The Committee's conclusions

- 591.** *The Committee recalls that this case concerns allegations that, against a background of an allegedly generalized discrimination against migrant workers intended to create a low-wage and easily exploitable labour force, the Government refused to register the MTU and carried out a targeted crackdown on the MTU by successively arresting its officers and subsequently deporting many of them. The Committee takes note of the new serious allegations provided by the complainant in relation to the situation of the current President of the MTU, Mr Michel Catuira. The Committee observes that the Government has allegedly pressured Mr Catuira's employer and taken extensive punitive immigration measures against Mr Catuira, including, by cancelling "permission to transfer workplaces", "permission for extension of stay" (resident permit) and by ordering him to*

leave the country. The Committee notes that the complainant firmly believes that such measures are part of an attempt to weaken the MTU by penalizing its officers in light of past targeting of MTU officers.

- 592.** As regards the allegations of harassment of Mr Catuira, the Committee notes the Government's indication, in its January 2011 communication, that the Ministry of Labour and Employment and the East Seoul Job Centre had investigated this employment relationship given that there were doubts as to its legitimacy. Following the necessary fact-finding including interviews with Mr Catuira and his employer, the Job Center found that he was engaged on paper only leading to the revocation of the permit of employment of his employer and the illegitimacy of his employment situation. Separately, the Immigration Office inquired into the legal residence of Mr Catuira and the legitimacy of his activities and cancelled his work and sojourn permits. The Committee further notes the Government's affirmation that the investigations and interviews conducted were legitimate measures taken by a sovereign state to ensure compliance of its immigration laws, irrelevant of freedom of association, and were not intended to suppress the MTU or to deport Mr Catuira.
- 593.** The Committee also takes note of the verdict issued on 15 September 2011, by the Seoul 12th Administrative Court cancelling all punitive immigration measures taken by the Seoul Immigration Service against the MTU President including the cancellation of the permit to transfer workplaces, cancellation of the extension of residence period and order to leave the country, denial of application for extension of the residence period and notice of requirement to leave the country taken on 10 February and 17 March 2011. The complainant provides a translation of the ruling providing that "[T]here is no evidence worthy of note to suggest that [President Catuira] obtained his permits [of employment and residence] in a false or otherwise unlawful manner" in relation to the Seoul Immigration Service's claim that the company where President Catuira was employed, did not exist and its cancellation of his visa. The Committee notes that the Government provides a similar summary of the decision in this respect. In relation to President Catuira's activities as the leader of the MTU, the Court explicitly recognized the rights of migrant workers to form and participate in labour unions, as protected under the Constitution and international law, and ruled that "[I]t is correct to understand the basic rights enjoyed by workers, including the rights to association and collective action, etc., as applying to migrant workers who are incorporated into South Korean society as well". According the complainant, the Court also stated that in light of the Seoul Immigration Service's deportation of MTU officers in the past, "it is suspected that the [immigration measures taken against Mr Catuira] were taken, not for the ostensible reason given, but, in fact, because of the plaintiff's activities as chief of the migrant trade union".
- 594.** The Committee notes with deep concern the serious allegations that the Government targeted Mr Catuira because of his activities in the MTU. While the Government affirms that the measures taken in respect of Mr Catuira were irrelevant to the question of freedom of association, the Committee observes that he is the President of a migrant union which has been seeking its registration to represent migrant workers for several years now. In this respect, the Committee notes the Court's recognition that the basic rights of workers apply to migrant workers and the doubts it has expressed over whether the immigration measures taken against Mr Catuira were wholly unrelated to his activities as leader of the MTU.
- 595.** The Committee recalls that Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words "without distinction whatsoever" used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc. [see **Digest of decisions and principles of the**

Freedom of Association Committee, fifth (revised) edition, 2006, para. 209]. The Committee has interpreted this right to include migrant workers on numerous occasions regardless of their legal status [see *op. cit.*, para. 214]. The Committee further recalls that measures of deportation of trade union leaders, while legal appeals are pending, may involve a risk of serious interference with trade union activities.

- 596.** While taking due note of the information provided by the Government concerning the rights of foreign workers and the regular inspections carried out at workplaces with foreign workers, the Committee urges the Government to refrain from any measures which might involve a risk of serious interference with trade union activities and might lead to the arrest and deportation of trade union leaders for reasons related to their election to trade union office. It requests the Government to submit detailed information on the current status of Mr Catuira's work permit in reply to the complainant's communication of 28 September 2011, and any other information related to this case.
- 597.** Noting with concern the complainant's allegations in its latest communication that the Seoul Immigration Service refused to renew the residence permit of Mr Catuira on 16 September despite the decision of the Court, the Committee requests the Government to enforce the decision of the Administrative Court cancelling all punitive measures until a final judgment had been rendered, including by granting the renewal of Mr Catuira's residence permit as requested by the Court.
- 598.** The Committee further regrets that these allegations and recent judicial developments arise within a framework in which the case concerning the application for registration of the MTU has been pending with the Supreme Court for over four years now. The Committee expresses its firm expectation that the Government will proceed with the registration of the MTU without delay and supply full particulars in relation to this matter, as well as in reply to its previous recommendations. The Committee once again requests the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration and to provide a copy of the Supreme Court's decision once it is handed down.
- 599.** Finally, while noting efforts made by the Korean Government to protect the labour rights of foreign workers with a valid working visa, including their right to organize and to collective bargaining, the Committee once again requests the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee requests to be kept informed of the progress made in this regard.

The Committee's recommendations

- 600.** In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) *The Committee urges the Government to refrain from any measures which might involve a risk of serious interference with trade union activities and might lead to the arrest and deportation of trade union leaders for reasons related to their election to trade union office. It requests the Government to enforce the decision of the Administrative Court cancelling all punitive measures until a final judgement has been rendered, including by granting*

the renewal of Mr Catuira's residence permit. The Committee requests the Government to submit detailed information on the current status of Mr Catuira's work permit in reply to the complainant's communication of 28 September 2011 and any other information related to this case.

- (b) The Committee expresses its firm expectation that the Government will proceed with the registration of the MTU without delay, and supply full particulars in relation to this matter.*
- (c) The Committee once again requests the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration and to provide a copy of the Supreme Court's decision once it is handed down.*
- (d) The Committee once again requests the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee requests to be kept informed of the progress made in this regard.*

CASE NO. 2571

DEFINITIVE REPORT

Complaint against the Government of El Salvador presented by

- **the Trade Union Confederation of El Salvador Workers (CSTS)**
- **the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA) and**
- **the General Trade Union of Workers in the Fishing and Allied Industries (SGTIPAC)**

supported by

the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: Anti-union dismissals, acts of intimidation against trade unionists at the Calvoconservas El Salvador SA de CV enterprise, and establishment of a trade union made up of company chiefs and trusted staff

601. The Committee last examined this complaint at its June 2011 meeting [see 360th Report, approved by the Governing Body at its 311th Session (June 2011), paras 612–619].