

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants

REFERENCE:
AL NLD 3/2019

4 September 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 34/18, 41/12, 34/5 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the forced expatriation of two activists from Cuba, reportedly facilitated by Aruba Airlines, a company registered in Aruba, as well as the threat of a formal accusation made by Aruba Airlines against **Mr. Javier Larrondo Calafat**, a human rights defender and representative of the victims of the alleged human rights violations.

According to the information received:

Mr. Eliécer Góngora Izaguirre is a member of the Unión Patriótica de Cuba (UNPACU), an organization defending civil liberties in Cuba. He has been the victim of more than 30 detentions without charges, including a six-month detention in jail. On 19 February 2019, Mr. Góngora Izaguirre was arrested and detained at the Tunas Police Station by members of the State Security. On 21 February 2019, he was forcibly taken to the airport and subsequently forced to take a flight to Guyana, operated by Aruba Airlines. He had not personally purchased or received a plane ticket, even though the airline later argued that there had been a ticket issued in the name of Mr. Góngora Izaguirre. The ticket had reportedly been issued by the airline one hour before it was paid for in cash. Prior to his expatriation, Mr. Góngora Izaguirre and his family had received death threats. Mr. Góngora Izaguirre is currently outside Cuba without his family and in a precarious economic situation.

Mr. Daniel Llorente Miranda is a well-known social activist. Since 2014, he has suffered more than 30 arbitrary detentions and imprisonment for the allegations of public disorder and resistance. On 16 May 2019, Mr. Llorente Miranda was forced by Cuban authorities to take an Aruba Airlines flight abroad without his family. Members of State Security have threatened Mr. Llorente Miranda's family

members with retaliation if he continues his activism. Mr. Llorente Miranda is currently outside Cuba.

Mr. **Javier Larrondo Calafat** is a co-founder of UNPACU and its representative in the European Union. He is also the founder and president of Prisoners Defenders, an organization defending the rights of political prisoners and promoting democratic values, based in Madrid, Spain.

On 3 July 2019, Mr. Larrondo Calafat was invited by Aruba Airlines to discuss his statements and investigations concerning the case of Mr. Góngora Izaguirre. He declined this invitation.

On 16 July 2019, Mr. Larrondo Calafat received an e-mail from a law firm contracted by Aruba Airlines, in which he was informed of the possibility of a formal accusation being filed against him for defamation. Mr. Larrondo Calafat currently fears civil litigation against him in this regard.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our deep concern about the alleged involvement of Aruba Airlines in the forced expatriation of two individuals, which, if confirmed, would constitute a violation of international human rights standards. In addition, we are concerned about the possible threat of formal accusation of defamation against Mr. Larrondo Calafat, which appears to be directly linked to his work on the cases presented above. Our concerns are aggravated by the fact that these measures may have a chilling effect on the activities of human rights defenders who denounce serious human rights violations committed by public authorities or private companies.

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 highlight the steps that the Government has taken, or is considering to take to protect against human rights abuses by business enterprises domiciled within its jurisdiction, and to ensure that they respect human rights throughout their operations and their supply chain, in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please indicate what measures the Government has taken to ensure that companies registered within the territory of the Netherlands operating

abroad, in particular Aruba Airlines, are not contributing to violations of international human rights law.

4. Please indicate what measures Your Excellency's Government has taken, or is considering to take, to help ensure that persons whose human rights are abused by Dutch business enterprises abroad have access to an effective remedy including by providing the option of bringing such cases before Dutch courts.

We would appreciate receiving a response within 60 days. Passed 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.

Please note that a letter with a similar content has been sent to the Government of Cuba and the company Aruba Airlines.

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.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of Your Excellency's Government on the international standards and norms applicable to the matters previously exposed.

We would like to draw attention to applicability of the Covenant extends to territory and jurisdiction of the State. The Netherlands has submitted the following declaration in relation to the territory of Aruba: "...The Kingdom of the Netherlands, consisting, as per 10 October 2010, of the European part of the Netherlands, the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), Aruba, Curaçao and Sint Maarten, regards these parts as separate territories for the purpose of article 12, paragraph 1, and as separate countries for the purpose of article 12, paragraphs 2 and 4, of the Covenant." Consequently, it remains uncontested that the Netherlands exercises jurisdiction over the territory of Aruba for the purposes of the applicability of the Covenant. The duty to respect and ensure the rights under the Covenant, affirmed in article 2, consequently extends to the territory of Aruba. As affirmed by the Human Rights Committee in its 2019, "The State party should intensify its efforts to put in place a legislative, policy and institutional framework to ensure protection of and to promote human rights in the Caribbean constituent countries...", CCPR/C/NLD/CO/5 para. 6.

The duty to respect and ensure entails negative and a positive obligations. First, the State must "adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations", CCPR/C/21/Rev.1/Add. 13 para. 7. Furthermore, there "may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities., see *id.* para. 8. As generally affirmed by the Human Rights Committee in its interpretation of article 2 in General Comment no. 36, the State must take appropriate measures to protect individuals against abuse by foreign corporations operating within their territory or jurisdiction. Likewise, it must take appropriate measures to ensure that activities taken by corporate entities based in their territory but having effects outside their territory or jurisdiction are consistent with human rights law, see, CCPR/C/GC/36 para. 22.

These duties are applicable within the territory and jurisdiction of the State, irrespective of the internal structure of the State. As affirmed by the Human Rights Committee, in line with article 27 of the Vienna Convention on the Law of Treaties, article 2 of the Covenant prevents States "from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty", see CCPR/C/21/Rev.1/Add. 13 para. 4.

We would like to draw attention also to the **United Nations Guiding Principles on Business and Human Rights** (A/HRC/17/31). The Guiding Principles affirm the international legal obligations applicable to the State: "States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including business" (Guiding Principle 1). This requires States to "clearly state that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). "In compliance with their obligation to protect, States must: (b) Ensure that other laws and regulations governing the creation and activities of companies, such as commercial law, do not restrict but rather encourage respect for human rights by companies; (d) Encourage and if necessary require companies to explain how they take into account the impact of their activities on human rights. (Guiding Principle 3). States should also take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate channels, that when such abuses occur in their territory and/or jurisdiction, those affected have access to effective redress mechanisms" (Principle 25). The Guiding Principles also emphasize that "States must ensure [...] that no obstacles are placed in the way of legitimate and peaceful activities of human rights defenders" (commentary on Guiding Principle 26).

Businesses also have a responsibility to respect human rights, which requires them to have appropriate policies and procedures in place; such as a human rights due diligence process to identify, prevent, mitigate, and account for how they address their human rights impact; and processes to redress all negative human rights consequences they have caused or contributed to causing. (Principles 11-24).

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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to 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 to draw public attention to those matters;

- article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, 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.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.