

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 and the Special Rapporteur on the situation of human rights defenders

Ref.: AL USA 18/2024
(Please use this reference in your reply)

20 November 2024

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 53/3, 52/9, 50/17 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged arbitrary denial of return to Cuban nationals, including human rights defenders, journalists, political activists, family members of prisoners, and people perceived as oppositionists, to their country of origin. Among the airlines involved is American Airlines, which is based in the United States of America.**

According to the information received:

Since 2020, there have been reported cases of human rights defenders, journalists, political activists, and people perceived as oppositionists of the Government being denied entry to Cuba after brief travels abroad, allegedly due to their opinions about the Government, political activism or human rights defence work. The denial occurs at the time of boarding the plane when airlines, such as American Airlines Group, inform them that entry to the country is not authorized, even though these persons have valid travel documents.

Right to nationality, free movement, and to leave any country, and to return to ones country

People affected by the prohibition of return to Cuba, where they have legal residence, are sometimes in a situation of uncertain legal residency abroad. The denial of entry to Cuba creates a situation of forced displacement and forces them to seek regularization of their migratory status in the country where they are subject to a transitory migratory status or to access international protection mechanisms in other countries because they are unable to enter their country of origin. This situation restricts their access to legal protections and basic rights such as employment, health, education, housing, and other related rights.

Human rights defenders, journalists, political activists, and people perceived as oppositionists, who are denied entry to Cuba, see their situation worsened by being unable to renew their expired passports or obtain other identity

documents due to the State's refusal to issue them or the decision not to request a renewal for fear of reprisals from the authorities. In this situation, these people face de facto statelessness. The impossibility of obtaining identity documents also hinders their access to basic services and places them in a situation of extreme vulnerability. In addition, the affected persons have no means of defense when they are prevented from traveling, nor can they make claims before the judicial mechanisms of their countries of origin, from where the entry prohibition orders allegedly originate.

Family separation

It has been documented that this practice has had a particularly devastating impact on dependent family members in Cuba, including the elderly and children. This has led to forced family separations that contravene international human rights law, resulting in profoundly harmful consequences that have caused serious damage to the human dignity of the affected persons and their families. These separations not only violate the fundamental rights of individuals but also undermine the cohesion and stability of families.

Cases in Cuba

Ms. Anamely Ramos González is an art historian, cultural rights defender and activist of the civil society organization Movimiento San Isidro (MSI), composed of Cuban artists, activists, journalists, and intellectuals with the objective of promoting freedoms of expression and association, and the creation and dissemination of art and culture in Cuba. Ms. Ramos has been the target of threats and reprisals by Cuban police authorities and agents of the State Security Organs (OSE – Órganos de la Seguridad del Estado) allegedly due to her activism and to her leadership and participation in various acts of activism and peaceful protest.

In January 2021, Ms. Ramos traveled to Mexico to begin her PhD in social anthropology at the Universidad Iberoamericana. In October 2021, Ms. Ramos traveled from Mexico to the United States at the invitation of the Foundation for Human Rights in Cuba with a single-entry tourist visa valid until 26 April 2022. In order to continue with her professional activities and fieldwork for her doctoral studies, her return ticket from the United States to Cuba was scheduled for 16 February 2022. At the airport, after verification and validation of the airline ticket and documentation, American Airlines personnel denied her boarding, informing her that she could not board because the Government of Cuba did not authorize her entry into the country.

After being denied entry to the flight, Ms. Ramos rescheduled her flight for 27 February 2022; however, she was denied boarding the airplane for a second time on that day. Airline personnel provided her with a notification signed by Mr. Néstor Morera Payrol, Lieutenant Colonel in the Cuban Ministry of the Interior, vaguely stating without clear grounds that she would not be allowed to enter the island. Ms. Ramos has tried on several occasions to contact representatives of the Cuban consulate in Washington D.C., both by telephone and email, without receiving any response. In addition, she presented herself in person at the consulate every day since 8 March of that year for ten consecutive days, but no one provided her with information about her

situation.

Currently, Ms. Ramos remains in the United States, and to date, she has not received any explanation as to the reasons for the denial of entry into Cuban territory, nor has the Cuban Government issued an official communication in this regard. It is worth noting that Ms. Ramos is a Cuban citizen with valid residence only in Cuba, subjecting her to a situation of vulnerability due to her irregular immigration status in the United States.

Ms. Ramos is currently in a situation of de facto statelessness and without protection from the Cuban State, a situation allegedly caused in connection with her work as activist in Cuba.

Without prejudging the accuracy of these allegations, we express our deep concern that the denial of entry to Cuba to human rights defenders, journalists, political activists, and people perceived as oppositionists may be linked to their legitimate work promoting human rights in Cuba. Further, we express concern about the chilling effect for human rights defenders, activist and journalists in Cuba and in the region that these cases may entail.

We are also concerned about the airlines' involvement in denying entry to Cuba to human rights defenders, journalists, political activists, and people perceived as oppositionists, by preventing these passengers to board the airplanes, acting against their human rights.

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.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to seek to clarify the information brought to our attention. In this regard, we would be very grateful to have your cooperation and comments on the following matters:

1. Please provide any additional information or comments you may have on the above-mentioned allegations.
2. Please provide information on the measures that your Excellency's Government has taken, or is considering taking, to ensure that business enterprises domiciled in its territory and/or jurisdiction respect human rights in all their activities, considering the UN Guiding Principles on Business and Human Rights.
3. Please indicate what measures your Excellency's Government has taken to ensure that business enterprises domiciled in its territory and/or jurisdiction, in particular American Airlines, are not contributing to violations of international human rights law in their operations.
4. Please indicate what measures your Excellency's Government has taken, or is considering taking, to ensure that human rights defenders,

journalists, and political opponents whose human rights have been affected by the operations of US-based business enterprises have access to comprehensive and effective remedies.

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

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 note that a letter expressing similar concerns was sent to the Government of Cuba as well as to the business enterprise American Airlines Group.

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

Fernanda Hopenhaym
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to draw your attention to the relevant international norms and standards that apply to the issues raised by the situation above.

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).

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. 6, 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 (CCPR/C/GC/36 para. 26).

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.

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.