

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 OTH 109/2024
(Please use this reference in your reply)

20 November 2024

Dear Mr. Isom,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this regard, we would like to bring to your urgent attention information we have received concerning **the alleged arbitrary denial of return of Cuban nationals, including human rights defenders, journalists, political activists, 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

American Airlines Group

due to their opinions about the Government, political activism or human rights defence work. The denial occurs at the time of boarding the plane of the airline you represent when the personnel informs 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 one's 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 defence 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 activists 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 airline's involvement in denying entry to Cuba to human rights defenders, journalists, political activists, and people perceived as oppositionists, by not allowing these passengers to board, acting against the human rights of those affected by this policy.

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 in relation to the above allegations.
2. Please provide information on the process that a Cuban national must follow to leave or enter the country by air, including: i) entry and exit requirements for passengers, ii) communication protocols with passengers and the Cuban Government, and iii) responsibilities and consequences in case of non-compliance with the established protocols, for both passengers and airlines. If possible, please attach the required forms and any other relevant protocol documents.
3. Please provide additional information on the measures that American Airlines Group has taken to implement the UN Guiding Principles on Business and Human Rights and to identify, prevent, mitigate, and respond to the adverse human rights impacts of its activities.

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.

Please note that a letter expressing similar concerns was sent to the Governments of Cuba and the United States of America.

Please accept, Mr. Isom, 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.

Regarding the mentioned allegations, we would like to first mention the guiding principles on Business and Human Rights (A/HRC/17/31). The guiding principles were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations involving governments, civil society, and the business community. The guiding principles have been established as the authoritative global standard for all states and companies to prevent and address negative consequences related to business activities on human rights. The responsibility to respect human rights constitutes a global norm of conduct applicable to all businesses, wherever they operate. It exists regardless of the capacity and/or willingness of States to fulfill their own human rights obligations and does not diminish those obligations. It is an additional responsibility to complying with national laws and regulations protecting human rights. We would like to highlight to the following two principles:

"The responsibility to respect human rights requires that business enterprises:

- a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts." (guiding principle 13).

"In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a) A policy commitment to meet their responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights;
- c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute." (guiding principle 15)

We would also like to draw your attention to the obligations under international human rights instruments, of which Cuba is part.

We would like to refer to articles 13, 19, and 20 of the Universal Declaration of Human Rights, which stipulate the right of everyone to return to their country, the right to freedom of opinion and expression, and the right to freedom of association,

respectively, and to articles 12(4), 19 and 22 of the International Covenant on Civil and Political Rights, which guarantee that no one shall be arbitrarily deprived of the right to enter their own country, the right of every individual to freedoms of expression and association, respectively. We remind that these obligations, as interpreted by the Human Rights Committee in its general comment No. 34, imply not only the direct respect by all State authorities for these freedoms, but also protection against acts by private persons or entities that obstruct their enjoyment.

In addition to the above, we would like to refer to 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 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.

Finally, we would 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.