

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

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(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 Nicaraguan nationals, including human rights defenders, journalists, political activists, family members of prisoners, and people perceived as oppositionists, to their country of origin. Some of the airlines involved are Aeroméxico, based in Mexico, and Avianca, based in Colombia with its parent company in the United Kingdom.**

According to the information received:

Since September 2021, there have reportedly been at least 96 cases of Nicaraguan nationals, including human rights defenders, journalists, political activists, family members of prisoners, and individuals perceived as opponents of the government, who have been denied entry to Nicaragua after briefly traveling outside the country. These denials are allegedly due to their views on the government, their political activism, or their work in defending human rights. The number of such cases increased in 2023. The denial occurs at the time of boarding the plane, when airlines such as Aeroméxico, based in Mexico, and Avianca, based in Colombia with its parent company in the United Kingdom, inform these individuals that they are not authorized to enter Nicaragua, even though their travel documents are in order.

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

The prohibition has affected both Nicaraguan nationals residing in the country who have been denied re-entry after a brief trip abroad, as well as Nicaraguan nationals living outside the country who were traveling to Nicaragua to visit their families or for other reasons. In the case of those who were residents in Nicaragua, the prohibition suddenly forces them into legally uncertain situations abroad. The denial of entry to Nicaragua 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, family members of prisoners and people perceived as oppositionists, who are denied entry to Nicaragua face further hardships as they are also denied consular services abroad. This prevents them from renewing expired passports or obtaining 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 and administrative mechanisms in Nicaragua, from where the entry prohibition orders allegedly originate.

Family separation

It has been documented that this practice has had a particularly devastating impact on their dependent family members in Nicaragua, 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 Nicaragua

Ms. **Margine Blandón** is the mother of Jaime Navarrete, a participant in the 2018 protests who has been detained in Managua since April of that year despite having completed his sentence in January 2023¹.

Ms. Blandón, who resides outside Nicaragua, used to make monthly trips to Nicaragua to visit her son until March 2023. In March 2023, Ms. Blandón had a flight scheduled to Managua. However, on 26 February 2023, she received an email from Avianca informing her that the Nicaraguan authorities had rejected her entry into the country, prohibiting her from entering Nicaragua.

Despite her attempts to enter, Nicaraguan immigration authorities have denied her entry and expelled her from the country. In July 2023, Ms. Blandón attempted to enter Nicaragua again on an Avianca flight, but upon arriving at the airport, Nicaraguan immigration authorities forced her to return on a flight to Miami. To date, Ms. Blandón has not been able to enter Nicaragua to visit her son, and she has not received any explanation or document justifying the denial of entry and expulsion from Nicaragua.

Ms. **Emelda del Socorro Rocha Pérez** is the mother of Hilfrem Saborio, a student who was detained during the 2018 protests. In February 2023, her son

¹ <https://www.ohchr.org/en/statements-and-speeches/2024/06/oral-update-promotion-and-protection-human-rights-nicaragua>

was expelled from Nicaragua along with 221 detainees.

Due to her son's expulsion, in March 2023, Ms. Rocha visited her son with a return flight to Nicaragua scheduled for 20 July. However, on 18 July, she received an email from the airline Avianca informing her that the Nicaraguan authorities had denied her entry into the country, prohibiting her from returning to Nicaragua. To date, Ms Rocha's situation has not changed and she has not received any explanation justifying the denial of entry.

Ms. Blandón, and Ms. Rocha are currently without protection from Nicaragua, allegedly due to their status as relatives of prisoners and individuals perceived as opponents of the Government.

Without prejudging the accuracy of these allegations, we express our deep concern regarding the allegations described above. In particular, we are concerned that the denial of entry into Nicaragua for human rights defenders, journalists, political activists, and individuals perceived as opponents may be linked to their participation in and promotion of human rights in Nicaragua.

Our concerns are heightened by the absence of a legal basis to justify the denial of entry, as there is no court ruling or administrative document justifying the refusal of return to their country of origin. These circumstances are particularly serious because the affected individuals have no means of defending themselves at the moment they are prevented from traveling, nor can they file complaints with the judicial mechanisms in Nicaragua, from where the entry prohibition orders allegedly originate.

We are also concerned about the involvement of the airline Avianca in the denial of entry to Nicaragua for human rights defenders, journalists, political activists, relatives of prisoners, or individuals perceived as opponents, by not allowing these passengers to board, thereby acting against the human rights of those affected by this policy. We are also troubled by the intimidating effect these cases may have on other human rights defenders, activists, and journalists in the country or even in the region.

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 Avianca Group International, 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 UK-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 Governments of Nicaragua, Mexico, and Colombia as well as to the following business enterprises Grupo Aeroméxico S.A.B., Avianca, and Avianca Group International Limited.

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.