

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 139/2024
(Please use this reference in your reply)

20 November 2024

Dear Mr. Pedreira,

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 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 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.

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

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 in relation to the above allegations.
2. Please provide information on the process that a Nicaraguan 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 Nicaraguan 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 Avianca Group International Limited and Avianca S.A. have 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 Nicaragua, Mexico, Colombia and the United Kingdom as well as to the business enterprises Aeroméxico and Avianca S.A.

Please accept, Mr. Pedreira, 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 Nicaragua 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.