



Kingdom of the Netherlands

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Date: 31 October 2019

Distinguished Special Rapporteurs, Dear Sirs,

Dear Sirs,

The Permanent Representation of the Kingdom of the Netherlands presents its compliments to the Office of the High Commissioner of Human Rights and would like to inform 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 in response to their letter of 4 September 2019, as follows.

The Special Rapporteurs brought to the attention of the Kingdom of the Netherlands a case of an alleged forced expatriation of two activists from Cuba, reportedly facilitated by Aruba Airlines, a company registered in Aruba, as well as an alleged 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. They expressed their concern about this case and requested the Kingdom of the Netherlands to provide more information. As the case concerns an alleged human rights violation reportedly facilitated by an Aruban company and therefore falls within the exclusive competence of Aruba, the below answers have been provided by the Government of Aruba.

The Government of Aruba first of all wishes to reiterate its full support for the respective mandates of the Special Rapporteurs and is grateful to the Special Rapporteurs for the opportunity to respond to the inquiries and to provide the requested information. The text below includes the answers to the questions 1 through 4 as mentioned in your letter.

The Kingdom of the Netherlands attaches great importance to the observance of internationally recognized fundamental human rights and to promoting such observance. In connection with this, it is important for the Government of Aruba that businesses operating within its jurisdiction respect human rights. The government will promote the adherence to the UN Guiding Principles on Business and Human Rights.

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When allegations of human rights violations committed by or contributed to by any Aruban business enterprise come to the attention of the Government of Aruba, the Government of Aruba engages with this business enterprise in order to verify the allegations and to encourage full respect of human rights. With respect to the case in question the following specific actions were taken by the Government of Aruba. The Government took note of the allegations at the end of June 2019. A week later, on 4 July 2019, the Government (Aruba Tourism Authority, Department of Foreign Affairs and the Department of Civil Aviation (DCA)) held a meeting with Aruba Airlines and provided the airline the opportunity to explain the allegations against them. On 8 July 2019 the DCA followed-up with a letter (letter no. DL/190398-A, Attachment 1)). Aruba Airlines in response strongly denied their involvement in the expatriations and expressed their willingness to cooperate to introduce measures to prevent any such incidents in the future and improve their ability to detect cases of suspected unlawful expatriation and/or human trafficking. On 12 July 2019 Aruba Airlines informed the Government about the actions that they intend to accomplish to prevent expatriations (letter no. ACM07-12-19/FRA-049, Attachment 2).

Subsequently, on 20 September 2019 (letter no. DL/190398-C, Attachment 3) the Government (Department of Civil Aviation) made ICAO Circular 352 mandatory and issued a requirement for Aruba Airlines to implement and comply with the contents of this Circular. ICAO Circular 352 is issued by the ICAO in cooperation with the High Commissioner for Human Rights of the United Nations, and provides guidelines to train cabin crew to identify and respond to suspected trafficking in persons. DCA has an oversight system in place and is monitoring the compliance/implementation of the Circular. This is being done through conducting checks without prior warning (spot checks), the observance of the trainings and reports by Aruba Airlines. The trainings for cabin crew have already started.

The Department of Economic Affairs is considering to include the UN Guiding Principles (UNGPs) on Business and Human Rights into the yearly Corporate Social Responsibility workshops next year as part of awareness raising for the private/business sector. The UNGPs will also be published on the website of the Department of Economic Affairs and in their publication 'doing business in Aruba'.

In regard to access to an effective remedy including before the court for offenses committed by Aruban companies outside Aruban territory, please be advised as follows. Specifically, in the case of the alleged violation of human rights by Aruba

Airlines, the Penal Code of Aruba provides an effective remedy to bring a case before the Aruban court. In this case, in particular article 1:3 of the Penal Code would be applicable, which stipulates that the criminal law of Aruba is applicable to anyone who has committed any criminal offense outside Aruba on a Dutch or Aruban vessel or aircraft. This article makes it possible to prosecute a violation of Aruban penal law, if committed on board an Aruban aircraft. Whether in casu a violation of the Aruban penal law would be applicable would be for the Public Prosecutor to determine.

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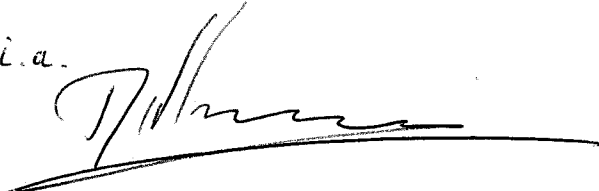
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Additionally, the Civil Code of Aruba makes it possible for an injured party to file a lawsuit against airline operators for tort and subsequent damages and compensation related to possible participation in a human rights violation.

The Government of Aruba trusts that the information provided above answers the questions posed by the Special Rapporteurs in this case.

Yours sincerely,

i.a.


Ms. Nathalie Olijslager
Deputy Permanent Representative / Charge d'Affaires a.i.