

IVAN HERNÁNDEZ CARRILLO

By Erik Jennische

The Confederation of Independent Workers of Cuba is a unique organisation. Cuba does not permit independent workers' organisations, but the Confederation has existed since 2008 and organises more than 500 workers in small businesses, the health and education sectors as well as in the fishing and mining industries. It has managed to survive in a difficult environment, where other officials take over work when its leaders are arrested. The Confederation has had to struggle to survive in Cuba, given the government's opposition to such independent groups. The Confederation's Secretary General, Iván Hernández Carrillo, was arrested in March 2003, together with 74 other activists, on a general crackdown on human rights defenders and democracy activists. He was accused of working for foreign interests and threatening national sovereignty. He was later sentenced to 25 years in prison. He was let out of prison in 2011, but only to serve the rest of his sentence at home.

In August and September 2013 he was attacked and severely beaten by police on several occasions. He is now serving his sentence at home and continues to work for the union. He is not allowed to travel overseas, and can be taken back to the prison any time. The Inter-American Commission on Human Rights⁴⁷ (IACHR) adopted a precautionary measure stating that his life and physical integrity was at stake, that he was defenceless, and that he faced real risks. The Cuban government did not abide by the requests of the IACHR, which included protection measures to ensure his physical safety.

The United States (US) and Cuba have normalised their relations with the opening of embassies in both countries. The US government still has in place several laws restricting economic relations with Cuba, including trade and investment, but many investors from Europe and the rest of the world are visiting Cuba to look for opportunities to invest. The new diplomatic relations with the US and the bilateral agreement with the European Union being negotiated at the moment will facilitate investments further.

In recent years the Cuban government has increased its efforts to attract foreign investors, especially in the food, agricultural, mining and tourism sectors as well as in the "Special Development Zone" of the port city of Mariel. In order to facilitate the investments, the national assembly adopted a new labour code (2013),⁴⁸ a new law on foreign investments (2014) that regulates working conditions for employees in companies with foreign owners, and a catalogue with "opportunities" for investors (2014).⁴⁹

⁴⁷ Inter-American Commission on Human Rights Resolution 5/2013 *Matter of Iván Hernández Carrillo regarding Cuba PRECAUTIONARY MEASURE No. 245-13* Available at: [http://www.oas.org/en/iachr/decisions/pdf/Resolution5-13\(MC-245-13\).pdf](http://www.oas.org/en/iachr/decisions/pdf/Resolution5-13(MC-245-13).pdf)

⁴⁸ Gaceta Oficial No 29 Extraordinaria de 17 Junio de 2014. Available at http://www.mtss.cu/sites/default/files/decretos/codigo_de_trabajo_2.pdf

⁴⁹ The Cuban Law on Foreign Investments of 2014, see Chapter XI, art. 30-31: http://www.cubadebate.cu/wp-content/uploads/2014/04/GO_X_20_2014_gaceta-ley-de-inversion-extranjera.pdf. Also see: Catalogue with opportunities: *Cuba – Cartera de Oportunidades de Inversión Extranjera*, Ministerio del Comercio Exterior y la Inversión Extranjera, 2014

This policy creates various challenges when it comes to the rights of human rights defenders, especially trade union leaders. According to the new labour code, employees only have the right to form trade unions that follow the “unitary principles”, i.e., being part of the Central de Trabajadores de Cuba, CTC - the only officially recognized trade union in the country which is closely allied with the government. Cuban law does not allow workers to join forces independently and negotiate collectively with employers – be they national companies or government workplaces.

When it comes to foreign companies investing in Cuba, all workers, with the exception of the top management and administrative body, are to be recruited and employed by a government appointed employment agency and not by the foreign investor itself. The law also specifies that when one of these companies “considers that a specific worker does not meet its demands at work, they can request that the employment agency replace that person with another.” Another provision sets out that any labour disputes are to be resolved “within the employment agency”, and not at the company.

These regulations have remained the same since the early 1990s when the Cuban government first opened up the economy for foreign investment. Their retention in the new legislation suggests the government intends to continue the same process, which would oblige foreign companies to abide by the regulations. The catalogue with “opportunities”, mentioned above, specifically states that the objective of the employment agency is “to supply and control the workforce” and that payment “is negotiated between the agency and the company”.

As a result, the Cuban government maintains its basic monopoly on employment, Cuban workers cannot join or form independent trade unions, and foreign investors cannot let their employees create their own unions. These state requirements radically undermine workers' rights in Cuba. Hence, there are no independent Cuban trade unions that have any experience of working together with foreign investors to protect the rights of employees.

Carillo’s case is not unique. There are other political prisoners, as well as dissidents, human rights defenders, and journalists in Cuban jails. As more companies consider investment opportunities in Cuba, they should recognise the political and human rights context in Cuba.

They will need to undertake rigorous human rights due diligence and carefully examine how they can operate in Cuba while adhering to international human rights standards. Investors will also face the challenge of adapting to the law on foreign investments without breaching their own human rights policies, including their commitments to their own staff elsewhere in the world, as well as the UN Guiding Principles for Business and Human Rights (UNGPs).

The UNGPs define the roles of governments and businesses when it comes to protecting and respecting human rights. When the Human Rights Council endorsed them unanimously in 2011, Cuba was part of the Council. These principles are therefore a good starting point for responsible foreign companies to discuss with the Cuban government how to minimize the negative human rights impacts of their investments. If more businesses are going to invest in Cuba, a test will be if the Cuban political space respects human rights, so that labour rights leaders like Iván Hernández Carrillo, are able to work freely and protect the rights of Cuban workers.