

TENTH ITEM ON THE AGENDA

Committee on Freedom of Association

**391st Report of the Committee on
Freedom of Association**

(Excerpt concerning Cuba – Case No. 3271)

CASE NO. 3271

INTERIM REPORT

**Complaint against the Government of Cuba
presented by
the Independent Trade Union Association of Cuba (ASIC)**

Allegations: The complainant organization alleges harassment and persecution of independent trade unionists, involving assaults, acts of aggression and dismissals; other acts of anti-union discrimination and interference by the public authorities; official recognition of only one trade union federation, controlled by the State; and the absence of collective bargaining and recognition of the right to strike

- 191.** The Committee last examined this case (submitted in December 2016) at its June 2018 meeting, when it presented an interim report to the Governing Body [see 386th Report, approved by the Governing Body at its 333rd Session (June 2018), paras 214–242]. Link to previous examinations
- 192.** The complainant sent further allegations on 4 June 2018, and on 14 February, 10 and 17 May, 10 June, 31 July and 27 August 2019.
- 193.** The Government sent its observations in six communications dated 24 September and 26 November 2018, and 27 March, 7 May, 13 and 26 September 2019.

194. Cuba has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

195. During its previous examination of the case in June 2018, the Committee made the following recommendations [see 386th Report, para. 242]:

- (a) The Committee requests the Government to ensure that ASIC is given recognition and that it can freely operate and carry out its trade union activities, in accordance with the principles of freedom of association.
- (b) The Committee requests the Government to ensure, in the light of the decisions applying the principles of freedom of association mentioned in its conclusions, that an investigation is made into all the allegations of aggression and other forms of anti-union discrimination made in the complaint and, should these be proven, to ensure that penalties that act as a deterrent are imposed and appropriate compensatory measures are taken, and to provide the Committee with detailed information on this matter and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the allegations, including those brought against the trade unionists referred to above and the judicial proceedings reportedly brought against Mr Reyes Consuegras.
- (c) The Committee requests the Government to keep it informed regarding the exercise of the right to strike in practice, including as regards any discrimination or disadvantage in employment that may have been applied in practice against workers for peacefully exercising the right to strike.

B. The complainants' new allegations

196. In its communications dated 4 June 2018, and 14 February, 10 and 17 May, 10 June, 31 July, and 27 August 2019, the complainant provides new information concerning specific allegations of violations of the public freedoms of trade union officials and members of the Independent Trade Union Association of Cuba (ASIC).

197. The complainant reports that harassment, repression and threats against union activists and officials of ASIC and its affiliated unions by the state security forces are still ongoing, and that they continue to be subjected to arbitrary arrests. In addition, their right to travel to participate in international activities in connection with their work as trade unionists is being restricted, without explanation or just cause.

198. The complainant alleges specifically that:

- (a) on 1 May 2018, ASIC's ten highest-ranking officials were placed under house arrest for an eight-hour period, so as to prevent them from taking part in a protest against the official parade organized by the Government;
- (b) Mr Iván Hernández Carrillo, ASIC general secretary, was subjected to unlawful arrests and harassment by state security agents: (i) in the first five months of 2018, he was arrested ten times and subjected to death threats by state security officers; (ii) on 26 March 2018, he was arrested and violently beaten up by state security officers; (iii) on 18 December 2018, he was arrested, his belongings searched, and several documents confiscated (including his membership card of the French Democratic Federation of Labour (CFDT)); (iv) on 27 July 2019, police officers and officers of the secret political police ordered the trade unionist to remain in his home, but when he realized that there was no court order, the trade unionist left his home and as a result was arrested for a

period of five hours and then released; (v) after leaving the police station he was followed by a patrol car for 96 hours; (vi) all his telephone calls are tapped, his access to email restricted and his social media accounts constantly blocked; and (vii) the official in question, who is serving a 28-year prison sentence under a legal concept known as *licencia extrapenal* (a type of parole), lives in constant fear of being returned to prison;

- (c) Mr Víctor Manuel Domínguez García, director of the National Trade Union Training Centre (CNCS), affiliated to ASIC, was prohibited from travelling and participating in international events connected to his trade union activities: (i) on 17 October 2017, he was prevented from travelling to Brussels to take part in a seminar organized by the CFDT on the world of work in Cuba; and (ii) on 31 May 2018 he was prevented from travelling to Geneva and participating in the activities of the International Labour Conference (ILC) and in the 49th CFDT Congress;
- (d) Mr Alejandro Sánchez Zaldívar, ASIC deputy general secretary, was subjected to arbitrary arrests, he and his family were harassed by the public authorities, and he was prevented from taking part in various union events held outside his home province: (i) on 7 and 8 March 2018, officials from the Department of State Security (DSE) raided his home and prevented him from travelling to Havana; (ii) on 9 March 2018, he was summoned to the Artemisa police station and detained for more than seven hours, during which time his personal belongings were stolen and he was threatened with the confiscation of his passport; (iii) in September 2018, he was prevented from travelling to Colombia to take part in a workshop on trade union affairs and labour relations sponsored by the National Institute of Social Studies (INES); (iv) on 1 November 2018, the customs authorities prevented him from catching his flight to Panama, where he was to take part in a workshop given by the University of Latin American Workers (UTAL); (v) on 12 February 2019, the union official's wife was harassed at her workplace by a DSE official; she was also warned that she and her husband would not be able to participate in any activities during the constitutional referendum on 24 February 2019; (vi) at midnight on 17 April 2019, two officers of the National Revolutionary Police (PNR) took the trade union official to the Cabañas police station, where they issued him with a warning for attempting to commit an offence, alleging his involvement in counter-revolutionary meetings in Havana; (vii) on 7 June 2019, he was prevented from leaving the country to participate in the ILC, where he was to be part of the delegation of the Democratic Trade Union Alternative of the Americas (ADS); and (viii) on 12 July 2019, he was interrogated, during which he was informed that he would never travel abroad again and that on 13 July 2019 (the day on which dissidents commemorate the sinking of the *13 de marzo* (13th of March) ferry), he would have to remain in his home, they also asked him to work for the police;
- (e) Mr Carlos Reyes Consuegras, ASIC secretary for trade union and labour affairs, was a victim of arbitrary arrests and harassment by state forces: (i) on 12 January 2018, after attending an ASIC meeting in Havana, he was arrested by the joint PNR forces and DSE officers in Cienfuegos province and several of his personal belongings were confiscated; (ii) on 2 March 2018, he was held by the above entities for over 11 hours to prevent him from attending an ASIC meeting; (iii) on 8 March 2018, he was summoned to the police station and informed that an investigation had been opened into his alleged offence of illicit economic activities; and (iv) on 19 November 2018, after taking part in a workshop given by UTAL, he was questioned by secret police officers in the provincial immigration office and, when he refused to provide information about the workshop, he was prohibited from travelling outside of his place of residence in Cienfuegos;

- (f) Mr Yoanny Limonta García, an audiovisual producer for ASIC, was subjected to arbitrary arrests: (i) on 7 February 2018, he was arrested by PNR officers in Cienfuegos terminal, transferred to the police station in Cienfuegos and his work equipment was confiscated (a video camera, tripod and flash memory device); and (ii) on 3 December 2018, while heading to the ASIC general secretary's home to film a video on human rights in Cuba, he was arrested, his work equipment was confiscated once again, and he was threatened with being charged with usurpation of public office if he continued with his independent press activities;
- (g) on 17 January 2018, Mr Wilfredo Álvarez García and Mr Bárbaro de la Nuez Ramírez were summoned by the Cienfuegos Technical Investigations Department (DTI) and detained for six hours. They were forced to wear regular prisoner uniforms, placed in solitary confinement, questioned, had their photos and fingerprints taken, and only allowed to leave on condition that they stopped attending meetings held in ASIC union officials' houses;
- (h) Mr Alexis Gómez Rodríguez, an ASIC member, was twice arbitrarily detained, during which an attempt was made to persuade him to become an informant for the State: (i) on 15 January 2018, he was questioned in the Centro Habana police station and held for 38 hours; (ii) on 23 February, he was questioned and held for 31 hours; and (iii) according to the union member, in both periods of detention he had been subjected to cruel and degrading treatment;
- (i) on 1 November 2018, the customs authorities prevented Mr Osvaldo Rodríguez Díaz, a lawyer and ASIC member, from travelling to Panama to take part in a workshop given by UTAL. On 15 November 2018, he was summoned to the Cotorro police unit, in Havana, transferred to a "special house", questioned about his independent trade unionism work and attempts were made to persuade him to collaborate with the DSE;
- (j) on 26 January 2018, Mr Jorge Anglada Mayeta, an ASIC member, was tried in the Municipal People's Court of Diez de Octubre for an alleged attack and given a two-year suspended sentence. According to the complainant, the allegations arise from an incident that occurred on 2 May 2017, during which the trade unionist intervened to stop a plain-clothes police officer arresting a self-employed worker;
- (k) on 26 February and 14 March 2018, Mr Roberto Arsenio López Ramos, president of the Association of Independent Educationalists of Cuba (CPIC), was summoned by the police and on both occasions questioned about the cooperation existing between ASIC and his organization;
- (l) on 15 March 2019, Mr Charles Enchris Rodríguez Ledzema, vice-president of the CPIC, was summoned to DSE headquarters in Güines and attempts were made to persuade him to become an informant;
- (m) Mr Eduardo Enrique Hernández Toledo, an ASIC member and self-employed worker (taxi driver), was subjected to harassment and criminal prosecution: (i) state inspectors harassed him and withdrew his taxi driver's licence because of his ASIC membership; (ii) on 27 September 2018, under the direction of a public prosecutor, a group of neighbours carried out acts of provocation, in response to which the activist is alleged to have countered the provocation with the words "down with Raúl"; (iii) because of that act, he was arrested and sentenced to a one-year prison term for contempt for authority; and (iv) the union member is reportedly serving his sentence in the "Pianni" forced labour camp;

- (n) on 3 October 2018, Mr Mateo Moreno Ramón and Mr Leandro Vladimir Aguilera Peña, members of the Cuban Association of Small Entrepreneurs (ACPE), an organization affiliated to ASIC, were arrested by DSE security officers in Pinar del Río, where they were due to meet with self-employed workers to inform them about their rights, and were forced to return to Havana;
- (o) Ms Magela Garcés Ramírez, a gallery worker and art critic, employed by the Ministry of Culture, was removed from her post in the Servando Cabrera gallery in Havana on 19 December 2018 after the publication in the *ART OnCuba* magazine of a text entitled “100 questions on Cuban art”. As a disciplinary measure, she was transferred to a lower-grade post with less pay and different working conditions. She did not accept the disciplinary action, and resigned;
- (p) the home of Ms Sara Cuba Delgado, an ASIC member, was placed under surveillance by the DES following her return from Panama, where she had taken part in a workshop on trade union affairs and labour relations given by UTAL in November 2018;
- (q) Mr Carlos Gómez Guevara and Mr Yolsdan Armenteros Vázquez, ASIC members, reported that they had been closely followed by three DSE officials, after making a visit to ASIC general secretary’s house;
- (r) university professor Omara Ruiz Urquiola, who worked at the Havana Higher Institute of Design and had publicly expressed her opposition to the regime and support for the independent trade union movement, was dismissed on 29 July 2019;
- (s) on 5 August 2019, the state security services raided the home of Mr Daniel Perea García, ASIC provincial secretary in Santiago de Cuba, was taken to and detained in the police station in Palma Soriana then subsequently released without charge. Since 2018, he has been subjected to continued assaults, arbitrary detentions and threats; specifically, on 6 February, 24 April and 26 June 2019 he was subjected to threats by a DSE agent known as “Adolfo”, because of the statements the trade unionist had made on social networking sites about violations committed against medical professionals in the “*Mais Médicos*” (More Doctors) programme in Brazil. The trade unionist has filed a complaint with the public prosecutor’s office with regard to the threats but has not received any response from the authorities;
- (t) on 7 August 2019, Mr Emilio Alberto Gottardi Gottardi, ASIC provincial secretary in Havana, was arrested when leaving his house by the joint forces of the national police and state security, interrogated about his trade union activities, in particular about the union’s latest meeting, and threatened with legal action;
- (u) on 8 August 2019, following a meeting in the home of ASIC general secretary in the Matanzas province, the trade unionists Dannery Gómez Galetto, Willian Esmérido Cruz, Roque Iván Martínez Beldarrain and Yuvisley Roque Rajadel were arrested, interrogated, threatened and had their belongings confiscated (including ASIC documents and a letter from the ILO Secretariat to the trade union), and the money that they had on them was taken. Subsequently, in the early hours of 24 August, the aforementioned trade unionists, as well as trade unionist Yakdislania Hurtado Bicet, were arbitrarily detained for nine hours and freed after being issued with a warning not to meet with people posing a “social danger”. In addition, Mr Roque Rajadel and Mr Martínez Beldarrain were asked to work for state security.

199. The complainant states that, due to the Venezuelan crisis and the threat of the collapse of the alliance between the two countries’ regimes, the public authorities have stepped up repressive acts against independent trade unions, as well as arbitrary detentions, and the number of

activists subjected to persecution and harassment has increased. The complainant alleges that: (i) there has been a significant increase in the cutting of the telephone services and tapping of telephone conversations of ASIC members, and in the blocking of their social media network services; (ii) the police force's new tactic is to blackmail detainees to coerce them into becoming informants; (iii) to date, approximately 20 trade unionists have been questioned and threatened; and (iv) the purpose of the Government's actions is to have the ASIC general secretary returned to prison on the pretext that he has violated his parole conditions; indeed, the persons questioned have been told that the general secretary receives money from the United States Central Intelligence Agency (known in English by its acronym CIA) and that if this allegation is proven he would return to prison. It was emphasized that he has only avoided imprisonment so far because of national and international pressure.

- 200.** In its further allegations, the complainant expresses concern about the public authorities' interference in the independent trade union movement. The complainant reiterates that its members continue to be strongly pressured by the DSE during the arbitrary detentions to which they are subjected by the regime to become informants, with promises they will be granted amnesty and no longer be subjected to harassment.
- 201.** Lastly, the complainant reports the continuing practice of the Cuban authorities of prohibiting independent union officials from leaving the country when they are travelling to carry out their trade union functions, including attending conferences and training courses.

C. The Government's reply

- 202.** The Government provides its observations in its communications of 24 September and 26 November 2018, and 27 March, 7 May, 13 and 26 September 2019.
- 203.** The Government states that, as with the allegations considered during the last examination of the case, these new allegations are false and part of externally organized and financed campaigns of political manipulation to discredit Cuba under the agenda to bring about a regime change and the desire to see a foreign power take control of the country, which was in contravention of the principles of sovereignty, self-determination and non-interference in domestic affairs. The Government indicates that the recommendations made by the Committee in its previous examination of the case are a reflection of the persistence of selective practices and political manipulation in the ILO's working methods and supervisory bodies against developing countries. The Government considers that these practices go against the spirit of dialogue and cooperation for the effective promotion of workers' rights, undermine tripartism and do not help improve the situation of workers in the world. Furthermore, it considers that these negative practices are inconsistent with the principles of objectivity, impartiality and non-selectiveness that should prevail in the handling of trade union freedoms. The Government therefore anticipates that it will be possible, on the basis of the elements submitted in its observations, to dismiss all of the allegations relating to the present case as baseless.

Recommendation (a)

- 204.** With regard to recommendation (a), the Government states once again that ASIC is not a trade union organization, given that: (i) it does not have the objective of promoting or defending workers' interests; (ii) it does not have the genuine support of any labour collective and is not a grouping of Cuban workers; (iii) the supposed leaders or activists referred to in the complaint do not represent labour collectives and are not workers themselves, as they do not have fixed employment relationships with entities or employers in Cuba, thus they do not come within the purview of the ILO, and the labour laws are therefore not applicable to them; (iv) the Government of the United States, through the International Group for Corporate

Social Responsibility and the American organization National Endowment for Democracy, funds ASIC leaders, who, in exchange for a sum of money, have to pose as independent trade union activists, dissidents or critics of the Government and report false violations of workers' rights; (v) the 2013 Labour Code (Act No. 116 of 2013) includes as its fundamental principles the right of workers to organize voluntarily and establish trade unions; (vi) the trade union organizations that make up the Confederation of Workers of Cuba (CTC) are autonomous and their members approve their own statutes and regulations, discuss and reach agreements democratically, and elect or dismiss their executives; (vii) national unions have 3,151,128 members and 95.1 per cent of Cuban workers are unionized; and (viii) Cuban workers are the beneficiaries of participatory and democratic social dialogue at all decision-making levels.

Recommendation (b)

205. With regard to recommendation (b), the Government indicates that the persons mentioned in the complaint have engaged in antisocial and criminal behaviour. It denies that any arbitrary or temporary detentions or arrests are carried out because these are effected in conformity with the criminal procedure in force and are strictly in line with the guarantees of due process that are recognized in the domestic legal system. It further indicates that institutions and security forces perform their duties in strict accordance with the law and it is not their practice to repress, intimidate, harass, torture or mistreat citizens. It recalls that the internal system provides procedures and resources to punish any authority or official overstepping its powers.

206. Concerning the individual cases mentioned by the complainant, the Government states that:

- (a) it is untrue that Mr Iván Hernández Carrillo is a political prisoner: (i) the chamber for crimes against state security of the People's Provincial Court of Havana found him guilty in 2003 of the offence of acts against the independence and territorial integrity of the State, provided for in the Act on the Protection of National Independence and the Economy of Cuba (Act No. 88 of 1999), and sentenced him to 25 years' imprisonment; (ii) on 23 March 2011, he was granted parole (his conviction will expire in the first half of 2028); (iii) he cannot travel outside the country under article 25(b) of the Migration Act (Act No. 1312 of 1976, as amended by Decree Law No. 302 of 2012); and (iv) in July 2016, September 2017 and March 2018, three charges were brought against him for disobedience, incitement to commit a crime and contempt, which are offences provided for in the Criminal Code (Act No. 62 of 1987), which the Cuban authorities decided to handle as minor offences (with the imposition of administrative measures, including fines and specific obligations and prohibitions);
- (b) Mr Carlos Reyes Consuegras, who also has no employment relationship, was prosecuted for illegal gambling and administrative proceedings were also filed against him for the illegal rental of a home and a fine imposed for the illegal possession of psychotropic substances. In addition, he was twice prosecuted for illicit economic activities. With regard to action taken against him by the immigration authorities, this was because of his past record of antisocial and criminal behaviour. He has never been arrested, but simply interviewed, fully respecting the guarantees provided by law;
- (c) Mr Jorge Anglada Mayeta was not beaten up by a police officer while trying to defend a self-employed worker. Mr Anglada pounced on and assaulted a police officer carrying out his duties without prior warning or legitimate cause, which constitutes an offence in criminal legislation throughout the world. On 16 February 2018, the Municipal People's Court of La Habana Vieja, having respected all guarantees of due process, found him guilty of assault and sentenced him to two years' imprisonment with a restriction of liberty order for an equal period of time;

- (d) Mr Víctor Manuel Domínguez García, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos and Mr Charles Enchris Rodríguez Ledezma were prosecuted following allegations relating to acts classified as offences under Cuban legislation (illicit economic activities, illegal gambling, possession of psychotropic substances, speculation and hoarding, possession, production and sale of instruments for the purpose of committing crimes, usurpation of public office, handling stolen goods, contempt, causing serious injury, damage, forgery of documents and public disorder). Given that domestic legislation allows for conduct of low risk to society to be subject to administrative proceedings, the authorities handled the above as minor offences;
- (e) criminal proceedings were not instituted against Mr Eduardo Enrique Hernández Toledo because he was allegedly exercising his trade union rights, and neither did the authorities commit any acts of persecution or harassment against him. The aforementioned person is not a trade union leader and has never been subjected to harassment or pressure by the authorities. He was prosecuted by the People's Municipal

Court of Trinidad for contempt and sentenced to a one-year prison term with custodial hard labour, and is currently out on parole;

- (f) Mr Yoanny Limonta García, who is also not a union official and has no employment relationship, was subjected to police checks because of his repeated commission of acts classified as offences and other antisocial behaviour (in 2011 for speculation, in 2013 for possession, production and sale of instruments for the purpose of committing crimes, and in 2016 for usurpation of public office);
- (g) Mr Mateo Moreno Ramón and Mr Leandro Vladimir Aguilera Peña were not arrested; they simply received warnings from the relevant authorities, in strict compliance with the law, to prevent them from carrying out their criminal intentions;
- (h) the restrictions on the right to free movement of Mr Osvaldo Rodríguez Díaz and Mr Alejandro Sánchez Zaldívar were implemented in accordance with current migration legislation. Mr Sánchez Zaldívar has had no employment relationship since 2013 and has a long history of violation of existing rules, regulations and laws, including allegations of illegal economic activities and disobedience. The allegations of threats and harassment against him and his wife are also untrue. Mr Sánchez Zaldívar has participated in several trade union events and workshops abroad funded by a foreign power. In 2018, as part of his activities against Cuba, he travelled to Geneva in the context of the 107th International Labour Conference. During the current year, his freedom to travel has not been arbitrarily restricted and the authorities have acted only in accordance with migration law
- (i) Ms Magela Garcés Ramírez wrote and disseminated an article in which she made serious and groundless accusations against a significant number of artists and art institutions and, given the seriousness of the allegations, her employer decided that she should work for a different art collection, which is why she decided to resign from her post; and
- (j) Ms Sara Cuba Delgado was not subjected to surveillance and harassment by state officials.

- 207.** With respect to the restrictions on ASIC members and officials travelling and participating in international events, the Government indicates that current migration legislation determines the grounds on which the authorities may restrict the right of a citizen to leave the country and this power is exercised by the relevant authorities in a non-arbitrary manner and respecting legal guarantees. It also denies preventing certain persons from leaving their homes during the 1 May celebrations or imposing house arrests.

Recommendation (c)

- 208.** With regard to recommendation (c) concerning the exercise of the right to strike in practice, the Government states that current legislation does not include any prohibition of this right and that criminal legislation does not provide for any penalty for exercising this right. The fact that workers do not use this mechanism is not due to a legislative prohibition but to the fact that they have the option of resorting to other more effective means at their disposal, including a number of different forms of meaningful participation and the exercise of genuine decision-making power on matters that concern them. Furthermore, the protection of trade union officials against any acts of anti-union discrimination, including with respect to the exercise of the right to strike, is governed by section 16 of the 2013 Labour Code, which provides that trade union officials have all the

guarantees necessary to carry out their functions and ensures their protection against transfers, disciplinary action, anti-union dismissals or other measures affecting their working conditions imposed on them because of their trade union work.

- 209.** The Government expects that, once all the information provided has been taken into account, the allegations that gave rise to this case will be dismissed because they are based on false grounds and are the result of fabrications that have nothing to do with the protection of workers.

D. The Committee's conclusions

- 210.** *The Committee recalls that this complaint concerns a number of allegations of assault, harassment and persecution against union officials and members of ASIC and its affiliated unions, with arrests and acts of aggression and restrictions on the free movement of union officials and members while carrying out their functions, and other acts of discrimination and interference by the public authorities. The complainant also alleges that only one trade union federation is recognized by the State and that there is no recognition of the right to strike.*
- 211.** *The Committee notes the Government's objections regarding the Committee's examination of this case. In particular, it notes that the Government considers that the allegations put forward by the complainant are part of campaigns of political manipulation to discredit Cuba, financed externally and in contravention of the principles of sovereignty, self-determination and non-interference in domestic affairs; and that the Committee's conclusions in the previous examination of the case are a reflection of the persistence of selective practices and political manipulation in the ILO's working methods and supervisory bodies against developing countries. In this respect, the Committee wishes to recall that, within the terms of its mandate, it is empowered to examine to what extent the exercise of trade union rights may be affected in cases of allegations of the infringement of civil liberties [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 22]. The Committee also recalls that it is not competent to consider purely political allegations; it can, however, consider measures of a political character taken by governments in so far as these may affect the exercise of trade union rights [see **Compilation**, op. cit., para. 24].*

Recommendation (a)

- 212.** *With regard to the recognition of ASIC, and its ability to operate freely and carry out its trade union activities, the Committee notes that the Government reiterates that: (i) ASIC is not a trade union organization; (ii) it does not have the support of any labour collective; (iii) the supposed trade union officials of the organization in question have reportedly not entered into any employment relationship with any entities or employers in Cuba and, furthermore, they have not been elected by the workers to represent them; (iv) the right to organize and to establish trade unions freely is enshrined in the 2013 Labour Code; and (v) certain ASIC union members and officials do not have an employment relationship. While taking due note of the Government's reply, the Committee observes, firstly, that for several decades it has been examining allegations of non-recognition and interference by the Government in the free operation of trade union organizations not affiliated to the CTC [see Case Nos 1198, 1628, 1805, 1961 and 2258 of the Committee on Freedom of Association]. The Committee recalls that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently, and represent their members adequately. It further recalls that freedom of association implies the right of workers and employers to elect*

their representatives in full freedom and to organize their administration and activities without any interference by the public authorities [see Compilation, op. cit., paras 449 and 666]. Considering that, according to the information provided by the complainant, some trade union members and officials mentioned in the complaint were self-employed workers and that others had been dismissed for anti-union reasons, the Committee recalls, secondly, that the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship. Workers who do not have employment contracts should have the right to form the organizations of their choosing if they so wish [see Compilation, op. cit., para. 330]. In light of the foregoing, the Committee refers to its previous conclusions and urges the Government to ensure that ASIC is given recognition, and that it can freely operate and carry out its trade union activities.

Recommendation (b)

Public freedoms

- 213.** *With regard to the alleged restrictions on public freedoms, the Committee recalls that, in its last examination of the case, the complainant had reported acts of anti-union discrimination, including arbitrary arrests, harassment, raids and prosecutions [see the Committee's 386th Report, para. 220] and had requested the Government to ensure that an investigation was made into those allegations. The Committee notes the numerous additional allegations made by the complainant regarding the commission of new acts of anti-union discrimination, in particular arbitrary arrests, harassment, criminal prosecutions and interference by the public authorities, and restrictions on the right to free movement of ASIC union officials and members, and the Government's reply regarding 17 specific cases of the 40 allegations.*
- 214.** *On the one hand, the Committee notes the Government's indications that Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo Enrique Hernández Toledo and Mr Yoanny Limonta García, who had allegedly been subjected to arbitrary arrests, had been tried and convicted for various activities classified as offences under Cuban legislation, with no connection whatsoever with their trade union activities, and that they enjoy all due process guarantees. With regard to the specific situation of the trade unionists Mr Mateo Moreno Ramón and Mr Leandro Vladimir Aguilera Peña, the Government states that authorities are acting in compliance with the law in order to prevent them from carrying out their criminal intentions, and denies that Ms Sara Cuba Delgado has been subjected to surveillance and harassment by state officials.*
- 215.** *The Committee also observes that: (i) the Government has not provided a copy of the court rulings handed down to the above-mentioned persons; (ii) while the Government lists the offences or details of previous legal proceedings against these persons (illicit economic activities, illegal gambling, possession of psychotropic substances, speculation and hoarding, possession, production and sale of instruments for the purpose of committing crimes, usurpation of public office, handling stolen goods, contempt, damage, forgery of documents, public disorder, disobedience, antisocial behaviour through the possession, production and sale of instruments for the purpose of committing crimes), it does not provide any evidence on the commission of those offences; (iii) the nature of the offences attributed to ASIC members and affiliated unions are very similar to those examined by the Committee in Case No. 2258,*

following a complaint filed in 2003 by the International Confederation of Free Trade Unions (ICFTU); (iv) the situation of Mr Iván Hernández Carrillo, ASIC general secretary, and Mr Víctor Manuel Domínguez García, CNCS director, was already examined by the Committee in Case No. 2258; and (v) in the case mentioned above, the Government did not provide a copy of the conviction of Mr Iván Hernández Carrillo and denied the existence of legal or other action against Mr Víctor Manuel Domínguez García.

- 216.** *The Committee recalls that, on numerous occasions, where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations. It also recalls that in many cases, it has asked the government concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor. [see **Compilation**, op. cit., paras 178 and 179]. Taking into account the different previous cases presented to the Committee concerning the harassment and arrests of trade unionists of independent trade union organizations of the CTC, the Committee urges the Government to send without delay a copy of the criminal convictions handed down against Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo Enrique Hernández Toledo and Mr Yoanny Limonta García and, with regard to the administrative and judicial proceedings awaiting decision, to keep it informed of their outcome.*
- 217.** *On the other hand, the Committee regrets to note that the Government has not provided specific information regarding Mr Osvaldo Arcis Hernández (arbitrary detention), Mr Bárbaro Tejeda Sánchez (raids on his home and the confiscation of personal belongings), Mr Pavel Herrera Hernández (arbitrary arrest and anti-union dismissal), Mr Emilio Gottardi (restriction of movement and threats), Mr Raúl Zerguera Borrell (restriction of movement), Mr Aimée de las Mercedes Cabrera Álvarez (restriction of movement), Mr Reinaldo Cosano Alén (restriction of movement), Mr Felipe Carrera Hernández (arbitrary detention), Mr Pedro Scull (threats), Mr Lázaro Ricardo Pérez (restriction of movement), Mr Hiosvani Pupo (restriction of movement), Mr Daniel Perea García (threats and raids on his home), Mr Dannery Gómez Galeto (arbitrary detention), Mr Willian Esmérido Cruz (arbitrary detention), Mr Roque Iván Martínez Beldarrain (arbitrary detention), Mr Yuvisley Roque Rajadel (arbitrary detention), Mr Yakdislania Hurtado Bicet (arbitrary detention), Ms Ariadna Mena Rubio (arbitrary detention) and Ms Hilda Aylin López Salazar (arbitrary detention). The Committee recalls that, while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists. The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights [see **Compilation**, op. cit., paras 132 and 128]. The Committee therefore urges the Government to ensure, in the light of the decisions mentioned in its conclusions, that an investigation is made into all the allegations of aggression and restrictions on public freedoms made in relation to the above-mentioned persons and to provide the Committee with detailed information on each of these matters and on the outcome*

(with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the aforementioned allegations.

- 218.** *With regard to the alleged restrictions on the right to free movement, the Committee notes that, according to the complainant, it has become common practice for the Cuban authorities to prohibit ASIC union officials and members from leaving the country when travelling to participate in international activities in connection with their trade union work, including during the ILC. It also emerges from the allegations communicated by the complainant that the public authorities had imposed restrictions on the right to free movement on members of ASIC and affiliated unions with a view to preventing their participation in trade union meetings or public demonstrations in the national territory.*
- 219.** *With regard to the alleged restrictions on ASIC members travelling outside the country to participate in activities connected to their trade union work including ILO meetings and invitations, the Committee notes that, according to the Government: (i) current migration legislation determines the grounds on which the authorities may restrict the right of an individual to leave the country and this power is exercised in a non-arbitrary manner; (ii) pursuant to this legislation, Mr Osvaldo Rodríguez Díaz and Mr Alejandro Sánchez Zaldívar were prohibited from leaving the country; (iii) Mr Iván Hernández Carrillo, ASIC general secretary, is serving a criminal conviction; and (iv) Mr Carlos Reyes Consuegras has an antisocial and criminal past, which prohibits him from travelling outside the country. The Committee observes that subsections (d), (e), (f) and (h) of article 25 of the Migration Act (Act No. 1312 of 1976, as amended by Decree Law No. 302 of 2012), which prohibit persons from leaving national territory “(d) when national defence and security render it advisable; (e) [when] they have obligations with respect to the Cuban State or civil responsibilities, provided that these have been expressly stipulated by the relevant authorities; (f) [when] they do not have the required authorization, pursuant to the laws aimed at maintaining a qualified workforce for the country’s economic, social, technical and scientific development, and for the security and protection of official information, ... (h) when for other reasons of public interest the competent authorities so decide”, grant a broad discretionary power to the public authorities to determine whether a person can travel outside the country, which could have an impact on the right of union officials of ASIC and other trade unions not affiliated to the CTC to organize and carry out their trade union activities freely. The Committee has highlighted that trade unionists, just like all persons, should enjoy freedom of movement. In particular, they should enjoy the right, subject to national legislation, which should not be such so as to violate freedom of association principles, to participate in trade union activities abroad [see **Compilation**, op. cit., para. 190]. The Committee recalls the special importance it attaches to the right of workers’ and employers’ representatives to attend and to participate in meetings of international workers’ and employers’ organizations and of the ILO [see **Compilation**, op. cit., para. 1069]. Regretting the Government’s indication that the presence of a trade union leader at the International Labour Conference in 2018 constitutes an act of this leader against the Cuban Government, the Committee expects the Government to refrain from unduly restricting the right of ASIC officials and members to organize and carry out their union activities freely, including when these are held outside the country.*
- 220.** *With regard to the alleged restrictions on the right of ASIC union officials and members to free movement in Cuban territory, the Committee notes that the Government denies imposing house arrests and preventing ASIC members from leaving their homes during the 1 May celebrations and that the complainant states that several of these restrictions were intended to prevent their participation in trade union meetings and to restrict their freedom of expression. While noting the*

*diverging versions of events of the Government and complainant, the Committee is bound to recall that the restriction of a person's movements to a limited area, accompanied by the prohibition of entry into the area in which his or her union operates and in which he or she normally carries on trade union functions, is inconsistent with the normal enjoyment of the right to association and with the exercise of the right to carry on trade union activities and functions [see **Compilation**, op., cit. para. 200]. The Committee therefore firmly expects the Government to fully ensure that ASIC officials have the freedom of movement in the national territory required to carry out their trade union activities without Government interference.*

Dismissals and anti-union transfers

- 221.** *With respect to the alleged anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández, the Committee once again requests the Government to send its observations in this respect as soon as possible. Concerning the transfer of Ms Magela Garcés Ramírez, in the absence of any evidence establishing her membership of a trade union organization, or that her transfer had an anti-union motive, the Committee will not pursue its examination of this allegation. With regard to the dismissal of Ms Omara Ruiz Urquiola, the Committee requests the complainant to provide further information about its alleged anti-union nature.*

Acts of interference

- 222.** *Lastly, with respect to the alleged infiltration by the Government into the trade union movement and acts of interference, the Committee notes that the complainant alleges that the Government continues to interfere in the independent trade union movement and that its members continue to be subjected to strong pressure by the DSE during arbitrary arrests with the aim of persuading them to become informants. Noting the absence of a response from the Government, the Committee urges the Government to provide its observations in that regard without further delay.*

Recommendation (c)

- 223.** *With regard to recommendation (c) of the Committee regarding the exercise in practice of the right to strike, the Committee notes that the Government states that: (i) current legislation does not prohibit this right and criminal legislation does not provide for any penalty for exercising this right; (ii) in practice, workers do not use this mechanism because there are more effective dispute settlement mechanisms; and (iii) trade union officials are protected by article 16 of the 2013 Labour Code, which protects against transfers, the imposition of disciplinary measures or anti-union dismissals. Recalling that the right to strike by workers and their organizations is a legitimate means of defending their economic and social interests [see **Compilation**, op. cit., para. 752], the Committee trusts that the Government will guarantee the exercise of this right in practice.*

The Committee's recommendations

- 224.** *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *Referring to its previous conclusions, the Committee urges the Government to ensure that the Independent Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.*
- (b) *The Committee urges the Government to send a copy, without further delay, of the criminal convictions against Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo Enrique Hernández Toledo and Mr Yoanny Limonta García, and to keep the Committee informed of the outcome of the administrative and judicial proceedings awaiting decision.*
- (c) *The Committee urges the Government to ensure, in light of the decisions mentioned in its conclusions, that an investigation is made into all the allegations of acts of aggression and restrictions on public freedoms with respect to Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Pavel Herrera Hernández, Mr Emilio Gottardi, Mr Raúl Zerguera Borrell, Mr Aimée de las Mercedes Cabrera Álvarez, Mr Reinaldo Cosano Alén, Mr Felipe Carrera Hernández, Mr Pedro Scull, Mr Lázaro Ricardo Pérez, Mr Hiosvani Pupo, Mr Daniel Perea García, Mr Dannery Gómez Galeto, Mr Willian Esmérido Cruz, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel, Mr Yakdislania Hurtado Bicet, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar, and to provide the Committee with detailed information with respect to each of the persons mentioned above and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the above-mentioned allegations.*
- (d) *With regard to the alleged restrictions imposed on ASIC members on travelling outside the country to participate in international activities in connection with their trade union work, including ILO meetings and invitations, the Committee expects the Government to refrain from unduly restricting the right of ASIC officials and members to organize and carry out their union activities freely, including when these are held outside the country.*
- (e) *With regard to the alleged restrictions on the right to free movement of ASIC officials and members in Cuban territory, the Committee firmly expects that the Government will fully ensure that ASIC officials have the freedom of movement in the national territory required to carry out their trade union activities.*
- (f) *Concerning the alleged anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández, the Committee once again requests the Government to send its observations in this respect as soon as possible.*
- (g) *With regard to the dismissal of Ms Omara Ruíz Urquiola, the Committee requests the complainant to provide further information about its alleged anti-union nature.*

- (h) *With respect to the alleged infiltration by the Government into the trade union movement and acts of interference, the Committee urges the Government to provide its observations in that regard without further delay.*
- (i) *(i) Regarding the exercise of the right to strike, the Committee trusts that the Government will guarantee the exercise of this right in practice.*