

# Governing Body

341st Session, Geneva, March 2021

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Institutional Section

INS

TWELFTH ITEM ON THE AGENDA

## Reports of the Committee on Freedom of Association

393rd Report of the Committee on Freedom of Association

*(Excerpt, concerning Cuba, Case No. 3271)*

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### Case No. 3271 (Cuba)

**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**

- 318.** The Committee last examined this case (submitted in December 2016) at its October 2019 meeting, when it presented an interim report to the Governing Body [see 391st Report, approved by the Governing Body at its 337th Session (October 2019), paras 191–224].
- 319.** The complainant sent further allegations on 15 October and 26 November 2019, and 28 January, 21 July and 7 December 2020.
- 320.** The Government sent its observations in seven communications dated 13 November 2019, 6 January, 27 and 28 May, 22 July and 22 December 2020, and 17 February 2021.
- 321.** 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

**322.** During its previous examination of the case in October 2019, the Committee made the following recommendations [see 391st Report, para. 224]:

- 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 Tejada 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 Galetto, Mr Willian Esmérito 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. 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.
- h) Regarding the exercise of the right to strike, the Committee trusts that the Government will guarantee the exercise of this right in practice.

## B. The complainant's new allegations

**323.** In its communications, the complainant reports new violations of the public freedoms of ASIC officials and members. The complainant alleges that harassment, repression, arbitrary arrests and threats against ASIC officials and members by the state police forces are still ongoing, in addition to restrictions on their right travel to participate in international activities in connection with their trade union work, without explanation or just cause.

- With regard to Mr Iván Hernández Carrillo, ASIC general secretary, the complainant alleges specifically that: (i) on 24 January 2020 he was arrested by state security agents in Havana, taken arbitrarily and without charge to a police station in the capital, subjected to physical aggression and threats and then taken to the Colón municipality, in the Matanzas province, where he lives. His belongings and documents, including his mobile telephone and the Committee's latest interim report,

were confiscated, and he was confined to his house under penalty of detention. The confiscation of his mobile telephone effectively blocked all forms of communication, both within the country and internationally, and his access to the internet. Upon leaving his home, he was arrested three times and taken back to his house under threat. During these brief periods of detention, the authorities withheld his whereabouts from his family and colleagues; (ii) on 28 June 2020 the police surrounded his home, and on 30 June 2020, while attempting to leave his home to participate in ASIC meetings, he was arrested and taken to the police station in Colón, where he was detained for three hours. Before being released, he was charged with the offence of incitement to commit crime and warned that he would not be permitted to engage in any public activity; (iii) on 22 November 2020, together with Mr Carlos Orlando Olivera Martínez and Mr Lázaro Díaz Sánchez, he was subjected to a violent arrest by police officers patrolling the area around his house. After being transferred to the police station in Colón, he was interrogated and threatened for almost five hours. Before being released, he was issued with a warning for alleged public disorder; (iv) on 23 November 2020, he was arrested and transferred to the police station in Colón, where he was interrogated and threatened for two and a half hours. Before being released, he was issued with a warning for allegedly disturbing public order and fined 150 pesos for breaching the security cordon; (v) the political police maintained a police cordon in the area around his house, intimidating him and warning him not to leave; and (vi) he received death threats and threats to return him to prison. The official in question is serving a 25-year prison sentence under a legal concept known as *licencia extrapenal* [parole completed at home] and may be returned to prison to serve the rest of his sentence.

- With regard to Mr Willian Esmérito Cruz Delgado, secretary of labour and trade union affairs at the ASIC Municipal Secretariat, the complainant alleges specifically that: (i) he was subjected to a violent arbitrary arrest on 5 October 2019; (ii) he was deemed a risk to society and placed in pretrial detention; (iii) on 11 October 2019 he was sentenced to one year's imprisonment at a summary trial for alleged contempt; and (iv) he was refused a self-employment licence for political reasons.
- With regard to Ms Yorsi Kelin Sánchez, ASIC secretary in the Sancti Spíritus province, the complainant alleges specifically that: (i) on 12 October 2019, she was arrested violently and in degrading conditions at a police station, without being formally charged; (ii) she was transferred to the pretrial detention facility in Sancti Spíritus where she was subjected to psychological abuse and deprived of sleep and of visits from her family; and (iii) she received threats relating to her family, including a threat to remove her daughter from her custody. She was asked to work for state security.
- With regard to Mr Alejandro Sánchez, Mr Emilio Gottardi, Mr Charles Rodríguez and Mr Felipe Carreras, ASIC officials, the complainant reports that they were prohibited from travelling to Panama City to attend a trade union training course at the University of Latin American Workers (UTAL) and that, specifically: (i) on 20 September 2019, Mr Alejandro Sánchez and Mr Emilio Gottardi were prevented from boarding their flight at José Martí International Airport; and (ii) on 16 November 2019, Mr Felipe Carreras was arrested and transferred to a police station, then released without charge after having missed his flight to Panama.

**324.** Furthermore, the complainant expresses its concern at the dissemination of false reports, defamation and rumours targeting ASIC officials and members through a blog entitled *Top de la Disidencia Cubana* (Top Dissidents in Cuba) run by the state security bodies. The complainant also states that the health crisis brought about by COVID-19 has served as an excuse to maintain pressure on ASIC officials and members, who have been threatened pre-emptively with being accused of spreading an epidemic, a crime set out in article 174 of the Criminal Code (Act No. 62 of 1987), if they leave their homes to meet, particularly in Havana. That crime carries a sentence of 2 to 12 years' imprisonment. Lastly, the complainant expresses its general concern at the redoubled efforts to repress ASIC officials and members identified in the Committee's reports.

## C. The Government's Reply

- 325.** In its communications, the Government provides its observations on the allegations in the present case. In general, the Government states that: (i) as with the allegations considered previously in relation to this case, these new allegations are false, baseless and lack legitimacy; (ii) the allegations form part of externally organized and financed campaigns of political manipulation to discredit Cuba under the agenda to bring about a regime change, in contravention of the principles of sovereignty, self-determination and non-interference in domestic affairs; (iii) the complainant does not aim to promote and protect workers' rights and trade union freedoms; (iv) the exercise of the right to freedom of association is not limited; rather, under article 56 of the Constitution, such exercise must respect public order and comply with the requirements set out in national legislation; (v) the accusation that degrading practices intensify on dates surrounding the approval of the Committee's reports is false; and (vi) 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.
- 326.** With regard to the allegations that the COVID-19 pandemic is serving as a pretext for maintaining the restrictions supposedly imposed on ASIC officials and members, the Government states that: (i) the measures implemented by the competent authorities to control and reduce the spread of COVID-19 and safeguard the lives of all persons in the country, in accordance with the country's legal system, were not adopted with the purpose of maintaining pressure on the supposed trade union leaders and trade unionists; (ii) the restrictions on movement between provinces are intended to prevent the spread of the pandemic, in accordance with article 45 of the Constitution which provides that an individual's exercise of his or her rights is limited only by the rights of others, collective security, general well-being and respect for public order, for the Constitution itself and for legislation; and (iii) the crime of spreading an epidemic, and the relevant sanctions, are set out in article 187(1) of the Criminal Code.

### **Recommendation (a)**

- 327.** With regard to recommendation (a) of the Committee's last report, 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) it does not enjoy legal or social recognition; (iv) 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; (v) 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 to engage in internal subversion that constitutes an affront to the legitimate constitutional and legal order of Cuba, as well as to the purposes and principles of the Charter of the United Nations and international law; (vi) legitimate trade union officials and representatives exercise their functions normally, enjoy all the necessary legal safeguards and are protected by the provisions of the Labour Code (Act No. 116 of 2013), the Criminal Code and the Criminal Procedure Act (Act No. 5 of 1977); (vii) 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; (viii) national unions have 3,151,128 members and 95.1 per cent of Cuban workers are unionized; and (ix) Cuban workers are the beneficiaries of participatory and democratic social dialogue at all decision-making levels.

### **Recommendation (b)**

**328.** With regard to recommendation (b), the Government regrets that the Committee has not taken note of the information sent in its previous replies, in which it explains in detail that the activities and acts for which the persons mentioned were charged and sentenced constitute crimes provided for and sanctioned under the Criminal Code. The Government states that: (i) the crimes have no connection whatsoever to trade union activities and the exercise of the right to organize; (ii) the legal system provides full protection and respect for the procedural safeguards required in criminal proceedings and that inform due process; (iii) trials are public, oral and adversarial, and final sentences are communicated to the public prosecutor and the accused person or his or her counsel, in accordance with the provisions of article 85 of the Criminal Procedure Act; (iv) sentences take into account private affairs that are protected under article 38 of the Civil Code; and (v) sending copies of sentences is not considered relevant.

### Recommendation (c)

**329.** With regard to recommendation (c), the Government states that: (i) in Cuba, no one is arrested, persecuted, harassed, intimidated or imprisoned for exercising his or her trade union rights; (ii) the Cuban authorities adhere strictly to the legal safeguards required in criminal proceedings and provided for in criminal legislation, which sets out the procedures to be followed when an arrest is made, the circumstances that warrant such action and the conditions in which an arrested person must be subject to preventive measures or criminal proceedings, or released; (iii) the Criminal Code provides for aggravating circumstances when the perpetrator of a crime is a public official or law enforcement officer; (iv) none of the persons mentioned in the recommendation are trade unionists or trade union officials; and (v) none of them were tried or convicted for any act or activity relating to the defence of workers' interests or the exercise of trade union freedoms.

**330.** In that regard, and concerning the individual cases mentioned by the complainant, the Government states that:

- Mr Osvaldo Arcis Hernández was arrested, prosecuted and tried for acts that disturbed the peace of foreign nationals between 2015 and 2017 and was declared “unfit for work” by the Expert Occupational Medical Examination Commission owing to his schizophrenia. Mr Pavel Herrera Hernández was dismissed for a workplace disciplinary infraction and the subject of criminal prosecution for the crime of theft.
- Mr Dannerys Gómez Galeto, Mr William Esmérito Cruz Delgado, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel and Mr Yakdislania Hurtado Bicet were arrested and taken to the National Revolutionary Police station in the Colón municipality: (i) they were charged with subversive propaganda under current criminal legislation; (ii) the money confiscated was returned in full, and it is untrue that the individuals were threatened; (iii) Mr William Esmérito Cruz Delgado, Mr Roque Iván Martínez Beldarrain and Mr Yuvisley Roque Rajadel received official warnings; and (iv) Mr William Esmérito Cruz Delgado was fined for violating the provisions of Decree Law No. 141/88 and failing to carry his personal identification.
- Mr Roque Iván Martínez Beldarrain has been prosecuted for the crimes of theft (2005), causing injury (2007, 2008 and 2009), speculation and hoarding (2013), making threats (2015) and handling stolen goods (2018).
- With regard to Mr William Esmérito Cruz Delgado: (i) between 2004 and 2018, he was convicted of the crimes of causing injury, making threats, contempt and public disorder; (ii) between 1998 and 2019 he received official warnings on six occasions for his continued antisocial behaviour; (iii) between 1990 and 2013 he received eight sanctions for various criminal acts that posed a low risk to society; between 2015 and 2018, he received two fines for violations of Decree Law No. 315 of 2013 on individual violations of the regulations governing selfemployment; and (iv) in October 2019 he was sentenced to one year's imprisonment for two acts of contempt.

- Mr Emilio Alberto Gottardi was not arrested, threatened or harassed; he was simply summoned to the Zanja police station in Havana with the aim of analysing the “false reports” of alleged trade union violations that he had made during the ILO Centenary celebrations.
- It is untrue that Mr Daniel Perea García was a victim of harassment, arbitrary arrest and threats: (i) in February 2019 he received an official warning regarding his duty to refrain from destabilizing, dissident and disconcerting activity; and (ii) in August 2019 he was charged with handling stolen goods (reports Nos 11329/19 and 11349/19).
- It is untrue that the freedom of movement around the country of Mr Raúl Zerguera Borrell, Mr Aimée de las Mercedes Cabrera Álvarez and Mr Lázaro Ricardo Pérez has been restricted; Mr Raúl Zerguera Borrell works as a private carrier and makes unlimited journeys around the national territory. He has been convicted on several occasions of crimes including damage and disturbing public order; Mr Lázaro Ricardo Pérez travelled to the United States of America on 30 January 2019; and Mr Aimée de las Mercedes Cabrera Álvarez does not have an employment relationship.
- Mr Bárbaro Tejeda Sánchez, Mr Felipe Carrera Hernández, Mr Pedro Scull, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar do not have employment relationships; Mr Bárbaro Tejeda Sánchez has been prosecuted on 12 occasions for the crimes of theft, leaving the national territory illegally, public disorder, making threats, speculation, hoarding, and handling stolen goods; Mr Pedro Scull and Mr Felipe Carrera Hernández were involved in subversive activities in the national territory for economic gain; Ms Ariadna Mena Rubio left the organization that calls itself ASIC and no longer has any link to it; and Ms Hilda Aylin López Salazar has lived outside the country since 2017.

### Recommendation (d)

**331.** With regard to recommendation (d), the Government states that: (i) it defends and guarantees the right of all persons to leave the country and to return; (ii) it is untrue that in the exercise of their functions, the Cuban authorities arbitrarily infringe citizens’ freedom to travel; (iii) the Migration Act (Act No. 1312 of 1976, as amended by Decree Law No. 302 of 2012) determines the grounds on which the authorities may restrict the right to leave the country and this power is exercised by the relevant authorities in a nonarbitrary manner and respecting the legal guarantees set out; and (iv) Mr Alejandro Sánchez Zaldívar was convicted of illicit economic activities and disobedience under the provisions of the Criminal Code, and the immigration authorities have acted in accordance with the provisions of current legislation.

### Recommendation (e)

**332.** With regard to recommendation (e), the Government disagrees with the allegations of restrictions on the right to free movement in Cuban territory of officials and members of the organization that calls itself ASIC and states that: (i) article 52 of the Constitution provides for the right to free movement, and individuals’ freedom to enter, remain in, travel through and leave the national territory without any restrictions beyond those set out in law is therefore recognized; (ii) legislation does not limit the freedom of movement in connection with the exercise of labour and/or trade union rights, and it provides extensive guarantees for the full exercise and enjoyment thereof; and (iii) the freedom of movement, including within the country, is legally restricted in the case of Cuban citizens who are defendants in criminal proceedings or respondents in civil proceedings; those who are completing a criminal sentence, whether custodial or non-custodial; and those who have been granted licencia extrapenal, suspended sentences or parole by the court.

### Recommendation (f)

**333.** With regard to recommendation (f), the Government states that: (i) commissions of inquiry were formed and interviews carried out with managers and human resource management specialists, and the relevant employment records underwent comprehensive review; (ii) the commissions corroborated that the

dismissals were not anti-union in nature given that both disciplinary measures were imposed in response to serious labour discipline violations (unjustified absences and unauthorized abandonment of the workplace), in accordance with the provisions of article 147(b) and (c) of the Labour Code; and (iii) neither Mr Kevin Vega nor Mr Pavel Herrera Hernández lodged any complaint with the Lower Labour Justice Body.

### Recommendation (g)

**334.** With regard to recommendation (g), the Government states that the dismissal of Ms Omara Ruíz Urquiola was not politically motivated and that the termination of her employment relationship owed to her repeated absences from the university and consequent breach of her employment contract.

### Recommendation (h)

**335.** With regard to recommendation (h), the Government states that it is untrue that the police or criminal investigation bodies undertake acts of interference or incite to infiltration those subject to criminal prosecution for common crimes and calling themselves “independent trade unionists”.

### Recommendation (i)

**336.** With regard to recommendation (i), the Government states that: (i) legislation does not prohibit the right to strike, and criminal legislation does not provide for any form of sanction for striking; (ii) workers may make use of other, more effective, methods; and (iii) protection for trade union leaders from possible acts of anti-union discrimination for having exercised their right to strike is set out in article 16 of the Labour Code, which grants trade union leaders the guarantees required to fully exercise their management.

## D. New allegations

**337.** With regard to the complainant’s new allegations, the Government states that:

- The allegations relating to supposed threats concerning the custody of a girl, the daughter of Ms Yorsi Kelin Sánchez, are false.
- It is untrue that Mr Iván Hernández Carrillo was subject to illegal or arbitrary arrest: (i) there is an absence of allegations of supposed violations, arbitrariness and excesses committed against him by the Cuban authorities or their agents; (ii) he was not arrested on 30 June 2020, and there is no police record of the alleged offence of incitement to commit crime; (iii) nor was he arrested on 23 November 2020, and there is no record of any action against him; (iv) he was sentenced by the People’s Municipal Court of Cienfuegos (trial no. 87 of 2019) to one year’s imprisonment for two acts of contempt, and the People’s Provincial Court of Cienfuegos declared his appeal to be inadmissible on 29 October 2019; (v) the following reports were lodged against him, in accordance with the provisions of article 8(3) of the Criminal Code: disobedience (45523/16), incitement to commit crime (9928/17) and contempt (3634/18); and (vi) he was the subject of criminal prosecution (trial no. 8 of 2003), in compliance with legal guarantees, for disturbing public order and 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 to 25 years’ imprisonment; and (vii) he was granted licencia extrapenal in March 2011 and is currently completing the rest of his sentence, which will end in 2028, at liberty.
- In October 2019, Mr William Esmérito Cruz Delgado was sentenced to one year’s imprisonment for two acts of contempt.

- The Cuban authorities, including the security and law enforcement agencies and their agents, must adhere strictly to the law and are in no circumstances permitted to threaten or intimidate citizens; should such acts occur, there are mechanisms to report them and to adopt the necessary internal disciplinary and criminal measures.

338. Lastly, the Government expresses its hope 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 constitute false accusations that lack a truthful factual or legal basis.

## E. The Committee's conclusions

339. *The Committee recalls that this complaint concerns a number of allegations of assault, harassment, persecution, arrests, acts of aggression and restrictions on the free movement of union officials and members while carrying out their functions by State security forces. The complainant also alleges that the State recognizes only one trade union federation, which is controlled by the State.*
340. *The Committee notes that, once again, the Government objects to the Committee's examination of this case. In particular, it notes that the Government reiterates 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; 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**, para. 24].*
341. *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 Constitution, adopted in 2019, and in the 2013 Labour Code; and (v) certain ASIC union members and officials do not have an employment relationship.*
342. *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 Cases 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**, 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 that all workers, regardless of their status, should be guaranteed their freedom of association rights so as to avoid the possibility of having their precarious situation taken advantage of [see **Compilation**, para. 329]. The Committee recalls that in its initial examination of this case, it noted that ASIC, in its founding declaration of principles, advocates trade union autonomy in the framework of the rule of law, aims to promote full compliance with ILO international labour standards and proclaims that it will not compromise or associate itself with party-political*



activities. In its union constitution, ASIC states that its central objectives include grouping together independent trade unions and reporting violations of international labour standards. Moreover, ASIC members' duties as set out in the union constitution include defending workers' claims and benefits. It is in this context that the Committee observes that the elements of ASIC's declaration of principles and union constitution fall within the scope of action and definition of a workers' organization. The Committee therefore refers to its previous conclusions and, once again, strongly urges the Government to ensure that ASIC is given recognition, and that it can freely operate and carry out its trade union activities.

## Civil liberties

- 343.** With regard to the alleged restrictions on civil liberties, 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 391st Report, paras 197–199] and had requested the Government to ensure that an investigation was made into those allegations. The Committee also notes that, in its new allegations, the complainant reports arbitrary arrests, harassment and criminal prosecutions by the public authorities against the following trade union leaders: Mr Iván Hernández Carrillo, Mr Willian Esmérito Cruz Delgado and Ms Yorsi Kelin Sánchez.
- 344.** In that regard, the Committee notes that the Government states that: (i) in Cuba, no one is arrested, persecuted, harassed, intimidated or imprisoned for exercising his or her trade union rights; (ii) the public authorities must adhere strictly to the law and are in no circumstances permitted to threaten or intimidate citizens; (iii) the mentioned persons were tried and convicted for various activities classified as offences under Cuban legislation, with no connection whatsoever to their trade union activities; and (iv) those persons enjoyed all due process guarantees. The Committee also observes that: (i) the Government has not provided a copy of the court rulings handed down to the above-mentioned persons or to those mentioned in recommendation (b) of its previous report; (ii) while the Government lists the offences or details of previous legal proceedings against these persons, 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, director of the National Trade Union Training Centre (CNCS), 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.
- 345.** 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 requested the Governments concerned 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**, para. 179]. The Committee regrets deeply the absence of a response from the Government to its request for specific information. Referring to its previous conclusions, the Committee once again 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, Mr Yoanny Limonta García, Mr Willian Esmérito Cruz Delgado and Ms Yorsi Kelin Sánchez. The Committee urges the Government to keep it informed of the outcome of the administrative and judicial proceedings awaiting decision.

346. With regard to its request that an investigation is made into all the allegations of aggression and restrictions on civil liberties reported by the complainant, the Committee notes the Government's reply that 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 Esmérito Cruz, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel, Mr Yakdislania Hurtado Bicet, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar are not truly trade unionists and were not tried or convicted for activities relating to the exercise of trade union freedoms.
347. 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**, paras 132 and 128]. While observing that the Government's reply makes no reference to the alleged restriction of movement of Mr Reinaldo Cosano Alén and Mr Hiosvani Pupo, the Committee regrets that the Government has not adopted the measures necessary to make an investigation into all the allegations of acts of aggression and restrictions on public freedoms with respect to the aforementioned persons. The Committee strongly urges the Government to ensure that the investigation in question is made and requests it to provide detailed information with respect to each of the persons mentioned and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the above-mentioned allegations.
348. With regard to the alleged restrictions on travelling outside the country to participate in international activities connected to trade union work, the Committee notes the complainant's new allegations that Mr Alejandro Sánchez, Mr Emilio Gottardi, Mr Charles Rodríguez and Mr Felipe Carreras, ASIC officials, were prohibited from travelling to Panama City to attend a trade union training course at UTAL. On the other hand, the Committee notes that the Government states that: (i) it is untrue that in the exercise of their functions, the Cuban authorities arbitrarily infringe citizens' freedom to travel; (ii) the Migration Act determines the grounds on which the authorities may restrict the right to leave the country; and (iii) this power is exercised by the relevant authorities in a non-arbitrary manner and respecting the legal guarantees set out.
349. Recalling that it has highlighted that trade unionists, just like all persons, should enjoy freedom of movement and that, 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**, para. 190], the Committee strongly urges 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.
350. With regard to the alleged restrictions on the right to free movement of ASIC officials and members in Cuban territory, the Committee notes that the Government disagrees with the allegations of restrictions on the right to free movement. 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**, 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

351. With respect to the alleged anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández, the Committee notes the information provided by the Government according to which: (i) commissions of

*inquiry were formed; (ii) the disciplinary measures were imposed in response to serious labour discipline violations (unjustified absences and unauthorized abandonment of the workplace); and (iii) the workers concerned did not lodge any complaint with the Lower Labour Justice Body. The Committee requests the Government to send a copy of the outcome of the investigations. The Committee also requests the complainant to confirm whether complaints against the dismissals in question have been lodged with the competent judicial authority.*

**352.** *With regard to the dismissal of Ms Omara Ruíz Urquiola, in relation to which the Committee had requested further information from the complainant about its alleged anti-union nature, the Committee notes the information provided by the Government according to which the disciplinary measures were imposed in response to serious labour discipline violations (unjustified absences). Noting the absence of additional information from the complainant, the Committee will not pursue its examination of this allegation.*

## Acts of interference

**353.** *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 its members continue to be subject to pressure during arbitrary arrests with the aim of persuading them to become informants. On the other hand, the Committee notes that the Government denies the allegations of interference by the police or criminal investigation bodies. Furthermore, with respect to the allegations that the COVID-19 pandemic is serving as a pretext for maintaining the restrictions supposedly imposed on ASIC officials and members, the Committee notes that the Government indicates that the measures implemented were not adopted with the purpose of maintaining pressure on the supposed trade union leaders and members. While noting the diverging versions of events of the Government and complainant, the Committee recalls the importance of adequate protection against any acts of interference in the establishment, functioning or administration of workers' and employers' organizations and firmly expects the Government to fully ensure adequate protection for ASIC officials against any acts of interference in their trade union activities, including in the circumstances described by the Government.*

## The Committee's recommendations

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

- a) *The Committee once again strongly 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 once again 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 Zaldivar, 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, Mr Yoanny Limonta García, Mr Willian Esmérito Cruz Delgado and Ms Yorsi Kelin Sánchez, and to keep the Committee informed of the outcome of the administrative and judicial proceedings awaiting decision.*
- c) *The Committee once again urges the Government to ensure that an investigation is made into all the allegations of acts of aggression and restrictions on public freedoms raised 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 Galetto, Mr Willian Esmérito 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 them 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, the Committee strongly urges 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) The Committee 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.**
- f) With regard to the alleged anti-union dismissals, the Committee requests the Government to send a copy of the outcome of the corresponding investigations. The Committee also requests the complainant to confirm whether complaints against the dismissals have been lodged with the competent judicial authority.**
- g) The Committee firmly expects the Government to fully ensure adequate protection for ASIC officials against any acts of interference in their trade union activities, including in the circumstances described by the Government.**