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International Centre for Trade Union Rights

*Centro Internacional para los Derechos Sindicales
Centre International pour les Droits Syndicaux*

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ICTUR was founded to
defend and extend trade union rights and
to raise awareness of these rights and their violations
around the world

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CC:

Ibrahim Mohamed, Principle Secretary for Labour
Paul Kihara Kariuki, Attorney General, Department of Justice
Clément Nyaletsossi Voule, United Nations Special Rapporteur on the
rights to freedom of peaceful assembly and of association
Kenya National Union of Nurses (KNUN)
Public Services International (PSI)

November 2018

Dear President,

The International Centre for Trade Union Rights is writing to express our concerns following criminal charges brought against a trade union leader in Kenya.

ICTUR understands that the Secretary General of the Kenya National Union of Nurses (KNUN), Seth Panyako, was arrested on 29 October and later charged with causing disturbance and taking part in an unlawful assembly, following a strike by KNUN members at the Kenyatta National Hospital (KNH). It is understood that Joseph Wanyoike Wanyambura and Evans Mwendwa Mwaluko were similarly arrested and charged. Nurses were protesting in response to management's interference with their rights to join the KNUN as well as failures to address security concerns following an assault on staff. It is understood that subsequently the KNH management have taken steps to recognise the KNUN under instructions from the Ministry of Health.

ICTUR wishes to remind the government of its obligations under international law with respect to freedom of association, as enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, as

well as in the Kenyan Constitution (Arts. 36 and 41). While we welcome the decision to allow the nurses to join a union of their choosing, the attempted interference in the rights of public sector workers to organise and the charges brought against Mr. Panyako raise on-going concerns. The ILO's Committee on Freedom of Association has clearly stated that the criminalisation of trade unionists presents a grave threat to workers' right to freedom of association and that 'no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike' (*Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, ILO, 6th Edition, 2018, paras. 970-4). Furthermore, the Committee has stated that protection of workers against acts of interference and anti-union discrimination at the hands of employers requires 'specific provisions accompanied by civil remedies and penal sanctions' and the role of government should include 'investigation and enforcement in order to ensure... that such acts are identified and remedied, that guilty parties are punished and that such acts do not reoccur in the future' (*Freedom of Association*, paras. 1150 and 1161).

ICTUR calls on the government to immediately drop the charges against Mr. Panyako and his co-accused and to undertake an investigation into the interference by KNH management with the workers' trade union rights. ICTUR further urges the authorities to take all measures necessary to protect the fundamental freedoms of workers to join and form unions and take action in defence of their interests. ICTUR will report these incidents in the journal *International Union Rights*, which was established in 1993, and which enjoys a readership in more than 100 countries.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'D. Blackburn', followed by a long horizontal line extending to the right.

Daniel Blackburn, Director