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International Centre for Trade Union Right

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ICTUR was founde
to defend and extend trade union righ
and to raise awareness of these righ
and their violations around the worl

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CC:

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Rafael Catalá, Ministro de Justicia

Esther Corral Cortés, Press Counsellor, Spanish Embassy in London.

Union General de Trabajadores de España (UGT)

Confederación Sindical de Comisiones Obreras (CCOO)

Annalisa Ciampi, United Nations Special Rapporteur on the rights to
freedom of peaceful assembly and of association

Dear Prime Minister Rajoy,

The International Centre for Trade Union Rights is deeply concerned about the criminal convictions of trade unionists in Spain for exercising their right to strike.

ICTUR understands that on 21 June Rubén Ranz and José Manuel Nogales were found guilty under Article 315.3 of the Criminal Code by the Madrid criminal court and fined EUR 1825 each for their part in a peaceful informational picket held in Madrid during the general strike on 29 March 2012. While it is welcome that neither the seven-year 'exemplary' prison sentence nor the penalty of pre-trial detention (both of which were sought by the state prosecutor) were imposed, the convictions of Ranz and Nogales nonetheless raise serious concerns about criminalisation of workers in Spain

trying to exercise their right to freedom of association through legitimate trade union activities.

ICTUR notes that the International Labour Organisation's Committee on Freedom of Association has made several requests to the government regarding the criminalisation of workers exercising their right to strike (Case No. 3093, Report No 380, October 2016). In light of concerns that the application of Article 315.3 of the Criminal Code is '*highly inconsistent*', the Committee noted that the minimum prison sentences and fines provided for in Article 315.3 for the offence of coercion during a strike are disproportionately punitive in relation to other offenses. The Committee further highlighted that the extensive use of the criminal law has led to '*a large number of prosecutions and criminal proceedings under way relating to the exercise of the right to strike*' and that '*frequent recourse to criminal proceedings in the area of collective labour relations does not help maintain a stable and harmonious system of labour relations.*'

In particular, the Committee raised concern over the Government's claim that '*trade union representatives generally lead informational pickets or demonstrations, and it is thus appropriate that they are named in legal proceedings dealing with violence, without prejudice to any further liability for such acts*'; and that '*it is at times difficult to determine who is responsible for unlawful damage caused during a strike, and thus the trade union organization is required to answer for the individual acts of its members...*'

Such a presumption that union officials may be held liable for such acts is in clear violation of the obligations undertaken by Spain under the ILO's fundamental conventions, all of which Spain has ratified. As the Committee clearly stated in its response: '*criminal charges brought against any worker, whether a union representative or not, for an offence committed during a strike, should be based on specific evidence pointing to the involvement of that person in the alleged offence.*' The Committee also noted with concern that some of the prosecutions that have been brought under Article 315.3 do not involve incidents of violence at all. The Committee has previously made this distinction very clear: '*Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful*' (*Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006, para. 651). The Committee finally requested that the government order a full review of the application of the relevant provisions of the Criminal Code by the competent authority.

The conviction of Ranz and Nogales clearly demonstrates that Article 315.3 poses a serious and continuing threat to the fundamental rights of workers to take collective action, by criminalising their right to strike. **ICTUR calls on the government to respond to the concerns raised by the ILO Committee and to**

the demands of trade unions, Unión General de Trabajadores (UGT) and Confederación Sindical de Comisiones Obreras (CCOO), and to ensure the repeal of these provisions.

ICTUR further calls on the government to take all measures necessary to review the convictions of Ranz and Nogales and to ensure the fundamental freedoms of workers to join and form unions and to 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