



**Open Letter to Mr. José Antonio Griñán, Chairman
of the Spanish Socialist Workers' Party**

**In the matter of the proposed reform of Article 23.4 of the Organic Law of
the Judicial Branch, the basis of Universal Jurisdiction in Spain**

The Bar Human Rights Committee of England and Wales ('BHRC'), Garden Court International, Garden Court Chambers ('GCI'), Red Lion Chambers ('RLC') and Doughty Street Chambers International Criminal Law Team ('DSC') write concerning the reform of Article 23.4 of the 'Ley Orgánica del Poder Judicial', or 'Organic Law of the Judicial Branch', which forms the basis of Universal Jurisdiction in Spain.

The BHRC, GCI, RLC and DSC wish to express their deepest concern over the reform, which will drastically limit the jurisdiction of Spanish courts in respect of international crimes. The effect of restricting the cases capable of being tried in the Spanish courts to those involving defendants who are Spanish nationals and or habitually resident in Spain, will be that international crimes will go unpunished, impunity will prevail, and victims will be left without effective remedy or reparation.

The BHRC, GCI, RLC and DSC welcome and support the decision of the Socialist Workers' Party ('PSOE') to appeal the reform to the Constitutional Court. The BHRC, GCI, RLC and DSC remain keenly interested in its progress, and will continue to focus international attention upon the presentation of the appeal by the PSOE, as well as upon the resultant decision. In particular, we hope that the

appeal by the PSOE reflects a long-term commitment to the fight to maintain Spanish Universal Jurisdiction.

The principle of 'prosecute or extradite' (*aut dedere aut judicare*) is not only a rule of customary international law but also a *jus cogens* principle. It reflects the commitment of the international community to ensure the prosecution of international crimes such as war crimes, crimes against humanity, enforced disappearances and genocide.

Myriad international conventions – among them all four 1949 Geneva Conventions, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 – underline the point. The International Court of Justice noted in the 2012 case of *Belgium v. Senegal*, “prosecution is an international obligation under the [Torture] Convention, the violation of which is a wrongful act engaging the responsibility of the State.” The Rome Statute of the International Criminal Court makes clear that domestic jurisdictions must take the lead in the fight against impunity, and states that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”

In this context, the reform would be a retrograde step which risks putting Spain in breach of its international legal obligations. By removing impunity for the most serious crimes, Spanish Universal Jurisdiction has, in our view, contributed towards a world which is safer and more just. Formal legal obligations aside, the prospect of impunity for those responsible for atrocious crimes both destabilises future peace and security, and undermines victims' past efforts to obtain justice.

The very existence of Article 23.4 has helped victims to come forward, who would never have otherwise done so. The BHRC, GCI, RLC and DSC are also profoundly concerned by the further restriction, within the reform, which will prevent the initiation of investigation of international crimes by *actio popularis*. The *actio popularis* process has empowered victims, and has enabled Spain to shine a spotlight on grave breaches of international law. The reform would close the doors of Spanish courts to the victims of human rights violations, who are unlikely otherwise to be able to obtain justice.

The BHRC, GCI, RLC and DSC further note with concern that the universal jurisdiction reform applies not only to future investigations but also to current investigations, meaning that all current cases on the basis of universal jurisdiction will be terminated until they are proven to comply with the new requirements. This may go beyond the legislative authority of Parliament by summarily closing all the investigations, and could exert broader constitutional ramifications by interfering with the independence of the judicial system.

Moreover, the reform is at odds with the Rule of Law itself. By closing down even those cases which have already been opened but which may not meet the new criteria, the reform would exert its effect retroactively. The impact upon victims of the crimes concerned would be arbitrary and devastating. We are aware that the reform was not subjected to examination by consultation bodies such as the General Judicial Council (*el Consejo General del Poder Judicial*) or the Council of State (*el Consejo del Estado*). All of this further emphasises the importance of the appeal, launched by the PSOE, before the Constitutional Court.

We urge the PSOE to maintain the strongest possible resistance to the universal jurisdiction reform, and pledge our unqualified support for their appeal before the Constitutional Court.

Bar Human Rights Committee of England and Wales (BHRC)

Garden Court International, Garden Court Chambers (GCI)

Red Lion Chambers (RLC)

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