Honorable Chief Justice,

The African Regional Organization of the International Trade Union Confederation (ITUC Africa) would like to express its shock and dismay at the news regarding the conviction of one of the most committed and distinguished trade unionists in Africa, Brother Francis Atwoli.

We have been informed by our colleagues from the Central Organization of Trade Unions (COTU – K) that early today, the High Court of Kenya found Brother Francis Atwoli guilty of inciting tea pickers to destroy property in an unlawful strike and also of defying a court order which requested him to call off the strike.

While recognizing the importance of upholding the rule of law, this court ruling appears to us to have undermined the rule of law based on the following.

First, according to the Kenyan Industrial Court Act 2011, all matters related to industrial disputes are supposed to be referred to the Industrial Court. On this occasion however, the Kenya Tea Growers Employers Association (KTGEA) decided to pursue the matter through the High Court of Kenya. The fact that this application was entertained by an institution which is responsible for interpretation and implementation of national laws and procedures raises concerns about the fairness of this conviction and brings into question the commitment to develop strong industrial relations institutions as stipulated in various labour legislations and the constitution of the Republic of Kenya.

Second, in his capacity as the Secretary General of COTU- K and General Secretary of the Kenya Plantation and Agricultural Workers Union (KPAWU), it is our understanding that Brother Atwoli complied with provisions of the law which require unions to give a 21 days' notice of intention to carry out a strike. The 21 days’ notice provides room for parties to consult and reach a solution on the matter in hand. In this case, KTGEA did not take any response action within the 21 days as required by the law of the land. Rather they reacted after the expiry of the 21st days by seeking a high court injunction by which time the strike which was then legal was well underway. By then it was not easy for Brother Francis Atwoli to call-off the strike as may have been ordered by the court. The matter was further complicated by the fact that Brother Atwoli was at the same time executing his international obligations as a
member of the International Labour Office (ILO) Governing Body in Geneva, Switzerland.

ITUC Africa understands that in this sentence, Brother Francis Atwoli has further been ordered to issue a public apology in the local media. Based on our submissions above, we regard this as a deliberate attempt to bring into ridicule not only the leadership of COTU (K) but the entire trade union movement in Kenya and beyond. We believe such an order undermines COTU (K)’s long-standing struggle for improving the working conditions of Kenyan workers.

ITUC-Africa is further concerned that this case represents a new development in which the judicial process is being misused to undermine workers’ struggle in Kenya.

We therefore urge you to revisit the case and ensure that the damages inflicted upon Comrade Francis Atwoli are recovered and the order requiring him to issue a public notice of apology is suspended pending a review of the whole case by your office.

We submit in trust

Kwasi Adu-Amankwah
General Secretary

Copies
1. The President, Republic of Kenya
2. Prime Minister, Republic of Kenya
3. Minister, Ministry of Justice
4. ILO Director, Area Office
5. COTU (K)
6. ITUC Brussels
7. All Affiliates