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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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Kenyan National Union of Teachers (KNUT)
Central Organization of Trade Unions - Kenya (COTU-K)
Education International (EI)

March 2018

Dear President,

The International Centre for Trade Union Rights is writing to express serious concerns about government interference with trade union officials in Kenya.

ICTUR understands that on 13 December 2017, Phyllis Kandie - Cabinet Secretary, Ministry of East African Community (EAC), Labour and Social Protection - ordered the resignation of eleven individuals from their positions of trade union office. The eleven individuals named in the gazette notice were Wilson Sossion, Edward Kahiga, Stanley Kiptis, Catherine Wambilyanga, Ronald Tonu, Tom Odege, Omboko Milemba, Mulei Mwalowa, John Mwamusi, Florence Bore and Richard Cheserem. It is understood that some of those named had already left their union positions, but that the order applied to all trade union officials holding either nominated or elective positions in any county assembly or Parliament.

It is further understood that on the 15 December, this order was nullified by the courts. However there are concerns that the measure was designed to target union leaders - in particular the Secretary General of the Kenya National Union of Teachers (KNUT) Wilson Sossion, who was nominated to become a member of parliament representing workers in August last year.

The action of the Cabinet Secretary came while 2000 KNUT delegates were meeting for their annual conference in Mombasa.

ICTUR further notes that in January 2018 the Teachers Service Commission (TSC) issued a letter de-registering Sossion and Omboko Milemba (Chairman of the Kenya Union of Post Primary Education Teachers, KUPPET) as teachers. It is reported that the loss of their occupational status renders them ineligible for trade union office and the TSC's move is therefore suspected to be politically motivated, following the failure to remove Sossion and Milemba from union office last year. The TSC is relying on the TSC's Code of Regulations for Teachers (Art. 187), which requires teachers, including those released from service to trade union office, to resign or retire from service if they intend "to contest for political office". Milemba had however already resigned last year, and Sossion left in 2001. Moreover Sossion did not "contest" for office, but was nominated precisely to represent workers in Parliament on the basis of his KNUT position.

These attempts to interfere with the elected representatives of trade unions are deeply concerning. As noted by the Central Organization of Trade Unions (COTU-K), numerous trade union leaders in Kenya have previously been elected to parliament while still acting as union officials (for example Tom Mboya, Dennis Akumu, Fred Kubai, Juma Boy, Roba Duba and George Muchai).

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). According to the ILO's Committee on Freedom of Association, "the determination of conditions of eligibility for union membership or union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organizations" (*Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, para. 405).

The Committee has further declared that "legislation which disqualifies persons from trade union office because of their political beliefs or affiliations is not in conformity with the right of trade unionists to elect their representatives in full freedom" (*ILO Digest*, para. 415). Also any requirement which makes eligibility for union office conditional on membership of an occupation or establishment, or on continuation of employment, is "not consistent with the right of workers to elect their representatives in full freedom" and "may be highly detrimental to the interests of trade unions" (*ILO Digest*, paras. 407, 411-2).

ICTUR calls on the government to undertake all necessary measures to ensure that it complies with Kenya's international obligations, and to protect the fundamental freedoms of workers to join and form unions and take action in defence of their interests. Attempts by the Cabinet Secretary and the TSC to interfere with these individuals' appointments to hold trade union office are in clear violation of these principles. ICTUR further encourages the authorities to repeal or amend – as necessary – any laws or regulations that might deny trade unionists in Kenya their rights to exercise freedom of association or to hold union office in accordance with the union's own rules, and to bring these into conformity with ILO

guidance. ICTUR further takes this opportunity to encourage Kenya to ratify ILO Convention 87.

We welcome the recent news that the High Court of Kenya in Nairobi dismissed on 20 February an application for an interim injunction against the KNUT and Mr Sossion which was intended to bar them from publicly discussing the operations of Bridge International Academies. As reported on by ICTUR last year, these legal actions represented a clear violation of the ILO fundamental Conventions: the principles of freedom of opinion and expression are essential elements of freedom of association. However, these latest actions by the Cabinet Secretary and the TSC raise serious concerns about the continuing attempts to undermine the activities and functioning of the KNUT.

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