

Winston Charles, Director
National Electoral Commission of the United Republic of Tanzania
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BY EMAIL ONLY

1 September 2020

Dear Director Charles:

As you know, we represent Mr. Tundu Lissu, a citizen of Tanzania and the current leader and nominated presidential candidate of Tanzania's main opposition party, Chama cha Demokrasia na Maendeleo (Party for Democracy and Progress) ("CHADEMA") party.

We write to express our growing concern about the National Electoral Commission's ("NEC") systematic disqualification of opposition candidates, particularly members of the CHADEMA party, in the October 2020 general elections. We are deeply troubled by the National Electoral Commission's disqualification of these candidates in breach of the National Elections Act and international human rights law. These illegal disqualifications will result in general elections that are neither free nor fair and produce illegitimate results. We ask that these abuses quickly be remedied through the appeal process provided for under the National Elections Act, that any and all opposition candidates who meet the modest requirements of the National Elections Act be confirmed, and that Tanzania carries out free and fair elections representative of the will of the Tanzanian people.

It has come to our attention that 1,020 CHADEMA candidates for chancellorships were disqualified by the National Electoral Commission out of 3,574 CHADEMA potential candidates. This represents an appalling disqualification rate of 28.5%. So too, the Commission has disqualified 53 CHADEMA candidates for Parliament out of 244 nominees, a 21.7% disqualification rate. These troubling disqualifications are not just limited to CHADEMA candidates and include other opposition parties as well. We note that 47 ACT-Wazalendo candidates were also disqualified. In contrast, the vast majority of governing party Chama Cha Mapinduzi ("CCM") candidates were approved. The shocking disparity of treatment in the approval of CCM and opposition candidates is blatant and deeply problematic.

The National Elections Act [CAP 343] governs elections in Tanzania and the approval of candidates by the NEC. The Act is intended to ensure broad participation of candidates who wish to stand for office and provides only narrow grounds for disqualification. With respect to parliamentary elections, Chapter IV, Part II of the Act lays out the proscribed form and nomination materials that must be submitted. The Act formulates objections to a nomination extremely narrowly. The Commission is only empowered to disqualify a candidate if, for example, "the particulars given in respect of the candidate are insufficient to identify him" or if "the nomination form does not comply with or was not delivered" properly. The National Electoral Commission does not have broad authority to disqualify candidates on subjective grounds other than whether the candidates have met the basic requirements for nomination.

The shocking disqualification of opposition candidates, especially as compared to CCM candidates, suggests the National Electoral Commission was not applying the narrow requirements of the National

Election Law. It runs in the face of truth to suggest that more than 20% of CHADEMA candidates did not meet the statutory requirements to be on the ballot in October. Rather than fulfilling its obligations under the Act, it appears that the Commission has been pursuing a political agenda of disqualifying opposition candidates in an effort to keep them off the ballots in the October general election.

The widespread disqualification of opposition candidates contravenes the National Elections Act and violates Tanzania's core international legal and human rights obligations. More specifically, this pattern of systematic political manipulation of the election process breaches the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights. Article 25 of the International Covenant guarantees "every citizen" the "right and opportunity" to "vote and to be elected at genuine periodic elections" that "guarantee[] the free expression of the will of the voters." Rampant disqualification of opposition candidates violates the internationally guaranteed rights both of the candidate to run for office and of Tanzanian citizens to express their democratic will. In so doing, these disqualifications deprive the Tanzanian people of the free and fair elections and undermine the legitimacy of the elections themselves.

We note the importance of the appeals process for disqualified candidates provided for in 40(6) of the National Elections Act. The appeals process ensures candidates have an opportunity to have their nominations reconsidered such that an appropriate decision, based solely on the legal grounds for qualification provided for in the Act, has been followed. CHADEMA candidates who were disqualified are now in the process of lodging appeals with the Commission. The Commission has a critical opportunity, under existing law, to remedy the improper disqualifications of opposition candidates and to ensure that the 2020 general elections are free, fair, and in accordance with both Tanzanian and international law. As a result of these appeals, we expect the Commission will determine that the vast majority of disqualified opposition candidates had in fact met the statutory requirements under the National Elections Act and that their nominations will be approved.

We will be closely monitoring events in Tanzania over the coming weeks. We await the result of the appeals process that must ensure broad participation of opposition candidates for the October elections. Should the disqualification of these candidates not be reversed, we will have no choice but to pursue every avenue available to shine light on the failure of the National Electoral Commission to ensure free and fair elections in Tanzania. Should it be necessary, we will undertake judicial review of the disqualifications as provided for in the National Elections Act; we will trigger international investigations by relevant United Nations Special Rapporteurs and the African Commission on Human Rights; and we will advocate for international sanctions against those who have denied free and fair elections for the people of Tanzania. We hope and expect such actions will be unnecessary.

Sincerely,

Robert R. Amsterdam



Founding Partner, Amsterdam & Partners LLP