

**WIDESPREAD IRREGULARITIES IN
TANZANIAN PRESIDENTIAL ELECTIONS
AND VIOLATIONS OF THE HARARE
COMMONWEALTH DECLARATION BY
THE GOVERNMENT OF PRESIDENT JOHN
MAGUFULI OF TANZANIA**

Submission to the Secretary-General of the Commonwealth
Secretariat for Referral to the Commonwealth Ministerial Action
Group (CMAG)

Prepared by Amsterdam & Partners LLP

Officially filed 29 October 2020

1. EXECUTIVE SUMMARY

On 15 November 2015, John Magufuli became president of the United Republic of Tanzania following the 2015 Tanzanian general election. Running under the slogan, ‘The Bulldozer,’ Magufuli was reputed to be a no-nonsense, results-driven politician. President Magufuli was elected based on ambitious promises to relieve poverty, unemployment, power outages, and corruption. However, President Magufuli has failed to deliver on any of these promises and instead has embarked on an aggressive attack on the judiciary, the opposition, and Tanzania’s fragile system of institutional checks and balances in an effort to undermine democracy and ensure his own power.

Under President Magufuli’s rule, Tanzania has been subject to grave violations of the rights and freedoms of journalists, human rights defenders, political opponents, and ordinary citizens. President Magufuli has weaponized the country’s laws against the opposition and abused his power over the police and judicial system to reinforce his own power. Over the past five years, the Tanzanian government has taken every possible step to silence criticism, extinguish opposition, and eradicate dissent.

The government of President Magufuli has repeatedly violated the Tanzanian Constitution by imprisoning democratic opposition leaders and brazenly violating the human rights of the Tanzanian people. Tanzania’s Constitution guarantees the rights to equality, life, privacy and personal security, freedom of movement, freedom of expression, freedom of association and the right to take part in public affairs. Thus, President Magufuli is legally bound to uphold its provisions, including:

- Article 14: “Every person has the right to live and to the protection of his life by the society in accordance with the law.”
- Article 15: “(1) Every person has the right to freedom and to live as a free person. (2) For the purposes of preserving individual freedom and the right to live as a free person, no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom save only- (a) under circumstances and in accordance with procedures prescribed by law; or (b) in the execution of a judgment, order or a sentence given or passed by the court following a decision in a legal proceeding or a conviction for a criminal offence.”
- Article 16 (1): “Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.”
- Article 17: “17.-(1) Every citizen of the United Republic has the right to freedom of movement in the United Republic and the right to live in any part of the United Republic, to leave and enter the country, and the right not to be forced to leave or be expelled from the United Republic. (2) Any lawful act or any law which is intended to - (a) curtail a person’s freedom of movement and to restrain or imprison him; or (b) limit a person from exercising his freedom of movement so as to - (i) execute a judgment or court order; or (ii) compel a person first to comply with any obligations arising under another law; or (iii) protect public interest in general or preserve certain special interest or interests of a certain section of the public, such act or law shall not be construed or be held to be repugnant to or inconsistent with the provisions of this Article.”
- Article 18: “Every person - (a) has a freedom of opinion and expression of his ideas; (b) has out right to seek, receive and, or disseminate information regardless of national boundaries; (c) has the freedom to communicate and a freedom with protection from interference from his communication; (d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.”

- Article 20(1): “Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.”
- Article 21: “...every citizen of the United Republic is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law. (2) Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.”

Nonetheless, those opposed to the Magufuli regime have been murdered, abducted and forcibly disappeared, tortured or persecuted. Those that remain have been subject to politically motivated criminal charges, extra-legal imprisonment, and intimidation. Amnesty International has described these attacks and arrests as “a calculated move to harass and intimidate the opposition and critics ahead of elections, restrict their human rights and limit their campaigning.”¹

Tanzania joined the Commonwealth in 1961 and therefore acceded to the 1971 Declaration of Commonwealth Principles and the 1991 Harare Commonwealth Declaration (**Harare Declaration**). Entrenched in these Declarations and pursuant to Article 4 of the Harare Declaration are values which include “democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; [and] fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief.”

Pursuant to the Commonwealth Charter (the **Commonwealth Charter**), as adopted by the Commonwealth Heads of Government on 14 December 2012, the Commonwealth declares its core values and principles to be:

- Article I: Democracy to allow everyone the opportunity to express their opinions and to allow citizens to participate in democratic processes, in particular through free and fair elections.
- Article II: Human rights as the foundation of democracy and development with a commitment to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies.
- Article III: International peace and security, sustainable economic growth and development and the rule of law as essential tools for the progress and prosperity of all.
- Article IV: Tolerance, respect and understanding for all human beings.
- Article V: Freedom of expression through a commitment to peaceful open dialogue and the free flow of information, including through a free and responsible media, and to enhancing democratic traditions and strengthening democratic processes.
- Article VI: Separation of powers by maintaining the integrity of the roles of the legislature, executive and judiciary.
- Article VII: Rule of law as an essential protection for the people of the Commonwealth and as an assurance of limited and accountable government.

¹ Amnesty. (2020). Tanzania: Opposition politicians arrested as crackdown escalates ahead of elections <https://www.amnesty.org.uk/press-releases/tanzania-opposition-politicians-arrested-crackdown-escalates-ahead-elections>

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- Article VIII: Good governance through the rule of law, to ensure transparency and accountability and to root out, both at national and international levels, systemic and systematic corruption.
- Article IX: Sustainable development to help eradicate poverty by pursuing inclusive growth whilst preserving and conserving natural ecosystems and promoting social equity.

Arrests of protesters and passing repressive laws violate Tanzania’s obligations under the Commonwealth Charter, specifically Article I, II, IV and V which respect and protect the liberty to participate in democratic processes, to freedom of expression and peaceful assembly. The overall suppression of dissent, interference with civil and political rights, and firm control of the judiciary through an endemic corrupted system where judges are political appointees violates Article VI and VIII of the Commonwealth Charter. Additionally, criminalizing non-violent criticism of state policies or institutions violates Tanzania’s commitment under Section VII to adhere to the rule of law.

The violations of human rights and democratic governance in Tanzania under President Magufuli have been well documented. In 2018, the European Union was forced to recall its ambassador to Tanzania, citing “the deterioration of human rights and rule of law situation.”² The 2020 Human Rights Watch country report on Tanzania noted that President Magufuli’s government has abused its powers under the registrar of Political Parties to “demand information from political parties, to suspend individual members of political parties, and required institutions or individuals to get approval from the Registrar to conduct civic education, or face criminal sanctions including imprisonment or fines.”³ Shortly after this report was released, at least nine prominent members of opposition political party members were subjected to significant fines based on dubious charges of sedition, incitement to violence, and holding an unsanctioned rally. President Magufuli and his Chama Cha Mapinduzi (CCM) party have shown no tolerance for free and fair discourse and democratic governance, much less criticism of the regime.

This law firm represents 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). Members of opposition including Mr. Lissu have faced serious threats to their life and safety. Mr. Lissu himself survived an assassination attempt in which he was shot 16 times following public criticism of the government. Mr. Lissu was subsequently denied of his statutory medical benefits and was eventually stripped of his parliamentary seat while still undergoing medical treatment and therapeutic care abroad. In July 2020, Mr. Lissu returned to Tanzania declaring his intention to campaign for the presidency in the 28 October general election. In August, Mr. Lissu was declared leader and nominated presidential candidate of the CHADEMA party. Since returning to Tanzania, Mr. Lissu has faced repeated threats to his safety, including a firebombing of CHADEMA’s headquarters on 13 August 2020. He has also been subject to legal intimidation, including baseless charges of sedition designed to block his presidential candidacy. Despite these threats and the very real danger to his own life, Mr. Lissu participated in the 28 October presidential elections and emerged as the most significant challenger to President Magufuli.

The conduct of the 28 October election reinforces our grave concerns about the state of democracy in Tanzania under President Magufuli. Throughout the run-up to the election and during the voting process, numerous reports have suggested widespread fraud, vote rigging in favour of President Magufuli, and violent intimidation of the opposition in an apparent effort to ensure a second five-year

² AP. (2018). EU recalls Tanzania ambassador amid call for gay arrests

<https://apnews.com/5f80d93ececac49afa95e09a4debbd3f8>

³ Human Rights Watch. (2020). <https://www.hrw.org/world-report/2020/country-chapters/tanzania-and-zanzibar>

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term for Magufuli. We write to draw the Commonwealth's attention to these serious irregularities both in the election itself and over the course of the electoral campaign, which included disqualification of opposition candidates, restrictions on the freedom of speech and assembly, and direct tampering with votes. In short, the election was anything but free and fair.

We bring this pattern of conduct to the attention of the Secretary-General of the Commonwealth Secretariat for referral to the Commonwealth Ministerial Action Group (CMAG), as policies undertaken by the current Tanzanian government represent serious and persistent violations of the Harare Declaration and the values and principles in the Commonwealth Charter. We therefore call on the Secretary-General to fulfil its enhanced duties as expressed in the 2011 CMAG report to "act as a custodian of the political values set out in the 2009 Affirmation" and initiate the process of appointing an envoy to gather facts of these serious and persistent violations. Ultimately, the threat to democracy in Tanzania must be referred to the CMAG for consideration and further action.

We are appealing on an urgent basis given the grave implications of President Magufuli's violations of the basic rights of Tanzanian citizens and the principles of the Commonwealth. Through the Commonwealth, the international community can take a firm stand in defense of human rights, democracy, and the rule of law in Tanzania.

2. BACKGROUND

Tanzania's history as a multiparty democracy dates back to 1992. At the time, the ruling party was the CCM. Despite Tanzania's commitment to multiparty democracy, the CCM party has never lost its grip on the presidency over the past 38 years. Every election in Tanzania throughout that period has been marked by a concerning pattern through which the CCM party abuses its control of the levers of government to intimidate the opposition, undermine democracy, and propagate their continuing power.

The glaring attacks on democracy in Tanzania were clearly evident during the 2015 General Elections. In that election, the Tanzanian police fired tear gas at a crowd of opposition supporters in Zanzibar in an intimidation effort and detained 40 volunteers who were monitoring the vote counting process.⁴ On 29 October 2015, Tanzanian media sources devoted significant coverage to police raids on multiple CHADEMA vote centers.⁵ The Tanzanian government later charged eight CHADEMA volunteers with publishing false election results under the Cyber Crimes Act,⁶ despite the fact that they merely published accurate election data that happened to contradict the government's preferred result.⁷ President Magufuli was declared winner of the 2015 elections with nearly 60% of the votes, continuing his party's grip on power.

President Magufuli and the CCM party's efforts to perpetuate their rule by undermining democratic institutions have continued over the past five years. Upon assuming office, President Magufuli began to assert control over judicial and law-enforcement authorities to target and marginalize, intimidate, and

⁴ Mwakideu, C. (2015). Fraud claims in Tanzania as vote counting. *Dw.com*, 26 October. <https://www.dw.com/en/fraud-claims-in-tanzania-as-vote-counting-continues/a-18806661>

⁵ Collord, M. (2015). Tanzania's ruling party wins election (again), but poll is annulled in Zanzibar. *Theconversation.com*, 29 October. <https://theconversation.com/tanzanias-ruling-party-wins-election-again-but-poll-is-annulled-in-zanzibar-49934>

⁶ John, R. & Lamtey, G. (2015). Chadema volunteers charged with publishing wrong results. *Thecitizen.co.tz*, 28 October. <https://www.thecitizen.co.tz/tanzaniadecides/Chadema-volunteers-charged-with-publishing-wrong-results/-/2926962/2933186/-/6kxx4e/-/index.html>

⁷ Allison, S. (2015). Tanzania election winner declared despite vote-rigging claims. *Theguardian.com*, 29 October. <https://www.theguardian.com/global-development/2015/oct/29/tanzania-announces-election-winner-amid-claims-of-vote-rigging>

incarcerate the political opposition. So too, he has consistently eroded the political and civil rights of Tanzanian citizens to stifle discourse and dissent. As elections grew near, the CCM party redoubled its efforts. In November 2019, the CCM party began a tactical effort to subvert the local elections. It blocked 96% of the opposition parties' candidates from contesting seats in Parliament through unjustified disqualifications. In contrast to this treatment of the opposition, more than 90% of the ruling CCM party's candidates were approved.⁸ Given these disqualifications, not surprisingly the CCM party ultimately won 99.77% of the votes according to "official" results. Such a high disqualification rate for opposition parties strongly indicates that the National Election Commission was biased in favour of the governing party in its candidate vetting process. Likewise, it raises deep concerns, that have been confirmed during the current election cycle, about the independence and fairness of democracy in Tanzania.

President Magufuli's government has also undermined the freedom of speech, expression, and assembly across the country. On the day of Mr. Lissu's formal nomination as presidential candidate in 2020, the Tanzanian government passed new legislation making the organization, planning, or even support of any form of demonstration online illegal. It was not a coincidence that this legislation was issued the same day Mr. Lissu's candidacy became official. It can reasonably be assumed that the Tanzanian government sought to restrict political participation by opposition political parties ahead of the October elections to avoid any public criticism online. These new restrictions add to already existent limitations on public demonstrations and a continued reluctance of government authorities to issue permits for political assembly by the opposition. Without the ability to organize, mobilize, speak, and demonstrate, the citizens of Tanzania have been deprived of their internationally guaranteed human rights and the ability to participate in government.

These tactics of extra-legal intimidation and political repression have paved the way for President Magufuli and the CCM party to continue their control of the Tanzanian government for five more years. As detailed below, President Magufuli and the CCM party have been involved in systematic and flagrant violations of human rights, democracy and the rule of law in violation of the Harare Declaration and the principles of the Commonwealth. These abuses, most notable in the current elections must be stopped and meaningful democracy must be restored in Tanzania.

3. ATTACK ON DEMOCRACY AND RULE OF LAW

Article I of the Commonwealth Charter recognizes the right of individuals to participate in democratic processes, in particular through free and fair elections. It notes that "governments, political parties and civil society are responsible for upholding and promoting democratic culture and practices and are accountable to the public in this regard." Furthermore, Article VII affirms the rule of law as an essential protection for the people of the Commonwealth. Non-violent criticism of state policies or institutions must not be criminal offences in a society governed by the rule of law according to the core values and principles of the Commonwealth. Recent actions by the Tanzanian government, including arrests of peaceful protesters and weaponizing legal institutions against the opposition directly violate Tanzania's obligations under international law and the Commonwealth Charter.

Pursuant to Article II and V of the Commonwealth Charter on human rights and freedom of expression, Tanzania committed to the "Universal Declaration of Human Rights and other relevant human rights covenants and international instruments" and "peaceful, open dialogue and the free flow of

⁸ Al Jazeera. (2019). Tanzania to hold local elections amid opposition boycott, 23 November. <https://www.aljazeera.com/news/2019/11/tanzania-hold-local-elections-opposition-boycott-191123052345878.html>

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information”. We are deeply concerned by the violence and ongoing use of restrictive laws to limit the freedoms of expression, association, and peaceful assembly. So too, we are concerned by the ongoing intimidation and arrests of political opposition members, lawyers, human rights defenders, independent online media outlets, and members of the public. The use of the judiciary to bring defamation suits, contempt of court charges, and spurious lawsuits is particularly troubling as this violates Tanzania’s commitment under Article VI of the Commonwealth Charter to maintain the integrity of the roles of the legislature, executive and judiciary. As mentioned above, Mr. Lissu is currently facing six politically motivated and unsubstantiated sedition charges. This abuse of the judicial process in an attempt to restrict political opposition is a violation of international human rights law and standards. Politically motivated cases must cease if Tanzania is to continue on the path toward democratic consolidation.

In March 2020, Freeman Mbowe, Chairman of CHADEMA along with eight other officials of the party, were found guilty of 12 charges, including sedition and unlawful assembly, linked to demonstrations held in February 2018. They were ordered to pay fines totalling \$152,000 or serve five months in prison. As they did not have the resources to pay the fines, the nine officials went to prison.⁹ Their situation is not unique. The Tanzanian authorities have targeted opposition members with draconian repressive laws to undermine human rights, stifle dissent and freedoms. This is even more worrying during the COVID-19 pandemic.

On 25 March 2020, the UN High Commissioner for Human Rights urged all states that “Now, more than ever, governments should release every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views”.¹⁰

In June 2020, opposition leader Zitto Kabwe, leader of the Alliance for Change and Transparency, along with seven other officials of the political party, was arrested for “unlawful assembly”. Amnesty International’s Deputy Director for East Africa, the Horn and the Great Lakes said: “The latest arrests of Zitto Kabwe and his colleagues is part of a growing crackdown on opposition leaders and government critics. It is also consistent with the constant harassment and intimidation that he has been subjected to by the authorities in the recent past. Coming barely three months before Tanzanians go to the polls, these arrests are a calculated move to harass and intimidate the opposition and critics ahead of elections, restrict their human rights and limit their campaigning”.¹¹

On 9 June 2020, Mr. Mbowe was attacked by 3 assailants. John Mnyika, Chadema’s Secretary General, claims the attack was “politically-motivated”.¹² Mr. Mbowe had accused the government of covering up Tanzania’s mismanagement of the coronavirus pandemic. Regional Police Commander Gilles Muroto told local media “This is an incident like any other. It is forbidden to use it for political purposes”. The assault came a day after Mr. Lissu announced his presidential bid.

⁹ Gregory, A. (2020). Tanzanians raise £100,000 to support opposition politicians convicted for holding rally. *Independent.co.uk*, 20 June. <https://www.independent.co.uk/news/world/africa/tanzania-opposition-politicians-convicted-magafuli-chadema-dar-es-salaam-a9398136.html>

¹⁰ United Nations. (2020). Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet. *Ohchr.org*, 25 March. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>

¹¹ Amnesty International. (2020). Tanzania: Opposition politicians arrested as crackdown escalates ahead of elections. 20 June. <https://www.amnesty.org/en/latest/news/2020/06/tanzania-opposition-politicians-arrested-as-crackdown/>

¹² News 24. (2020). Tanzania opposition says attack on leader 'politically motivated'. 9 June. <https://www.news24.com/news24/africa/news/tanzania-opposition-says-attack-on-leader-politically-motivated-20200609>

Collectively, these arrests and charges against Mr. Lissu and opposition figures represent clear violations by the Tanzanian government of the basic human rights it committed to protecting and promoting under Article II of the Commonwealth Charter. The fact that Mr. Lissu and others charged in these cases have no effective remedy to challenge the charges against them further constitutes a violation of Articles I and VII of the Commonwealth Charter.

4. DISQUALIFICATION OF OPPOSITION CANDIDATES

The government of President Magufuli's efforts to undermine the election began with the disqualification of opposition candidates in violation of both national and international law. The National Election Commission (NEC) has refused to allow many opposition politicians to even run for office on the pretextual basis of failing to meet legal requirements. Hundreds of opposition candidates for parliament and other offices have been disqualified from participating. Mr. Benson Kigaila (Deputy Secretary-General of the CHADEMA party) stated that 57 of its candidates for parliament and 642 for councillor had been disqualified. So too, the NEC has blocked appeals of these disqualifications, again in violation of Tanzanian law and the Commonwealth Charter. Mr. Kigaila has detailed the experience of one CHADEMA candidate, who sought to appeal his disqualification and instead was met by an Election Officer who locked the election commission office and left without returning, thereby making the filing of an appeal impossible.¹³ Another opposition party, Alliance for Transparency and Change ("ACT Wazalendo"), has similarly indicated that most of their candidates had been "objected" to by the NEC and were therefore not able to participate in the election.¹⁴ Professor Ibrahim Lipumba, the candidate for President of the Civic United Front ("CUF") opposition party, said his party received reports of candidates being challenged by authorities or even having their nomination forms stolen before submission.¹⁵ As a result of these pretextual disqualifications, the opposition has been unable to meaningfully contest the election on a nationwide basis.

5. ARRESTS AND INTIMIDATION OF OPPOSITION LEADERS, INCLUDING MR. LISSU

Over the course of the months preceding the October 28 election, President Magufuli's government has been arresting opposition leaders without cause to limit their political activism. On 23 June 2020, Mr. Zitto Kabwe (leader of the Tanzanian opposition party "ACT Wazalendo") and seven other opposition members were arrested during an internal meeting of their party in the southern region of Lindi and charged with "endangering the peace."¹⁶ Mr. Kabwe had been previously arrested on political charges: in 2017 for contradicting government statistics and in 2018 for alleging police had been responsible for the killing of civilians. In May 2020, he was found guilty of sedition and incitement before the Kisutu Resident Magistrate's Court and was ordered not to write or say anything seditious. This order effectively prevented him from participating in political discourse in advance of the election.

The government's use of the police to intimidate the opposition permeates all levels of Tanzanian society. In July, seven members of Chadema's youth wing were arrested for allegedly "ridiculing the national anthem and flag" because they sang the anthem while hoisting the party flag, rather than the national flag. They remain incarcerated today. Mr. John Mbilinyi, a CHADEMA party candidate, was arrested and released in August for an "unauthorized demonstration" because he was accompanied by

¹³ Uwesu, I. Tanzanian opposition parties allege candidates have been unfairly disqualified. Voanews.com, 21 October 2020, <https://www.voanews.com/africa/tanzanian-opposition-parties-allege-candidates-have-been-unfairly-disqualified>

¹⁴ Tanzanian opposition alleges irregularities in candidates' enrollment. Reuters.com, 21 October 2020, <https://www.reuters.com/article/us-tanzania-elections-irregularities-idUSKBN25O2OS>

¹⁵ *Supra* note 1.

¹⁶ Tanzania: Freedoms Threatened Ahead of Elections. HRW.org, 21 October 2020, <https://www.hrw.org/news/2020/09/02/tanzania-freedoms-threatened-ahead-elections>

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supporters as he collected his nomination papers.¹⁷ On October 21, four CHADEMA agents were killed and others badly injured in a highly suspicious car “accident” in Sumbawanga as they were going to take an oath to perform their electoral functions in the upcoming elections. The circumstances of the incident are deeply concerning, and it appears the government may be willing to kill in an effort to win.

As mentioned above, our client, Mr. Lissu, has repeatedly been the victim of attacks and intimidation by the government over the past several years, including an assassination attempt. On 7 September 2017, Mr. Lissu was brutally attacked by unknown gunmen inside his official residence in Dodoma in a blatant assassination attempt. He was struck with 16 bullets to his abdomen, arms, and legs. While the government has failed to fully investigate this brazen attempt on Mr. Lissu’s life, it is at least complicit in the assassination attempt. While Mr. Lissu’s residence was normally heavily guarded by governmental authorities, the armed security who should have been protecting him were conveniently absent during the attack. So too, the CCTV cameras monitoring Mr. Lissu’s apartment block were removed and were never recovered. Although the Tanzania Police Force admitted a week after the attack that they had the footage from the cameras, that footage has never been shared nor has it led to arrests of the perpetrators.

After undergoing medical treatment abroad, Mr. Lissu returned to Tanzania on 27 July 2020 with the intention to campaign for the presidency. Since his return, Mr. Lissu has received numerous threats, including threats of arrest by the government and threats of murder. The government has refused to provide Mr. Lissu with the security to which he is entitled, as a presidential candidate, under Tanzanian law. Instead, the National Police Chief has gone on record stating the police will ‘get’ Mr. Lissu. Last week a video resurfaced from a political campaign rally evidencing threats made against Mr. Lissu by President Magufuli’s nephew, Kheri James, stating that if Mr. Lissu mobilizes citizens to contest President Magufuli’s claim of an electoral victory “they will inject him with poison.”¹⁸ Given the numerous attacks on Mr. Lissu and the government’s refusal to provide him security, Mr. Lissu’s life remains at risk today.

6. RESTRICTING POLLING AGENTS FROM OPPOSITION PARTIES

The government has violated national election law by restricting the number of certified polling agents from opposition parties. The Tanzanian electoral system relies on these polling agents from specific parties to supervise the election and tally votes. Representation of all political parties among polling agents is essential to the free and fair operation of the system. Yet, President Magufuli’s government has ensured many voting stations have no agents from opposition parties. This, in turn, provides the ruling party opportunities to reject votes for the opposition or even directly tamper with vote tallies.

As the NEC has implemented policies in advance of the election, polling agents from areas of the country with strong opposition support have been required to travel long distances to appear before Returning Officers (senior election officials) to be certified to perform their electoral functions. The imposition of this requirement breaches the National Election Law, according to which polling agents should be confirmed in their respective local districts. So too, the government has challenged the certification of opposition polling agents. For example, the Election Returning Officer for President Magufuli’s home district of Chato sent a letter to the CHADEMA party’s District Secretary General

¹⁷ Tanzania: Laws weaponized to undermine political and civil freedoms ahead of elections. Amnestyinternational.org, 19 October 2020, <https://www.amnesty.org/en/latest/news/2020/10/tanzania-laws-weaponized-to-undermine-political-and-civil-freedoms-ahead-of-elections/>

¹⁸ Magufuli's Nephew Kheri James, Threatening To Assassinate Tundu Lissu with Poison Injection. Accessed 19 October 2020. https://www.youtube.com/watch?v=EpL10M7bzRM&ab_channel=ThobiasMarandu

indicating that his party's agents for several wards will not be confirmed because the NEC official suspects "forgeries" of necessary signatures. No such contestation of supporting materials for the ruling CCM party has occurred. This discriminatory treatment privileges the candidacies of the CCM polling agents.

President Magufuli's government has also intentionally provided inaccurate information to polling agents of opposition parties in an effort to prevent their successful registration. For example, in the Ilala district in Dar es Salaam, agents from CCM were told in advance to appear at the office of the Returning Officer, while agents from the opposition who arrived on time to be confirmed were refused entry for allegedly "being late". In Nyamagana district, the office of the returning officer for Mabatini ward (an opposition area) is closed, making it impossible for polling agents from opposition parties to be confirmed. Similar misrepresentation, arbitrary rule changes, and fraudulent conduct occurred across the country in advance of the election.

7. RESTRICTING FREEDOM OF SPEECH AND ASSEMBLY

President Magufuli's government has taken extreme measures to undermine freedom of speech and assembly in Tanzania to prevent political discourse and ensure President Magufuli's re-election. Earlier this month Amnesty International released a detailed report entitled *Repression by Law Ahead of Tanzania's General Elections* documenting a range of abuses by the Tanzanian Government, including the use of domestic law to stifle all forms of dissent.¹⁹ More specifically, on the day of Mr. Lissu's return to Tanzania in July, the government passed legislation making the organization, planning, or even support of any form of demonstration online, illegal. The timing of this move is no coincidence. President Magufuli's government sought to restrict political participation by opposition parties ahead of the elections. These new restrictions, in conjunction with existing limitations on public demonstrations and a continued reluctance of government authorities to issue permits for demonstrations or other electoral events, have extinguished any prospect of a free and fair election.

The government has also sought to limit the freedom of communication through the internet and mobile communications devices. On 21 October, the Tanzania Communication Regulatory Authority issued a regulation to telecommunications service providers suspending access to bulk short messaging services and bulk voice services. This directive, implemented by the major telecoms providers in the country, suspended the most basic communications services during an election, prohibiting the Tanzanian people from exercising their rights to freedom of expression and communication.

After limiting the freedom of expression of Tanzanian citizens, the government has turned to directly target journalists and NGOs. In August 2020, new rules were introduced requiring foreign journalists to be chaperoned on assignments by a government official. So too broadcasters are now required to seek permission to air content produced by foreign media. This new regulation was imposed as a direct response to the domestic broadcast of a BBC interview with our client, Mr. Lissu, by Radio Free Africa. Since 2019, four new laws have been enacted restricting the operation of NGOs operations, including regulations that limit the freedom of association and prohibit election-related activities by NGOs.²⁰

8. MANIPULATION OF VOTER ROLLS AND BALLOT STUFFING

The Government of Tanzania has directly interfered with the conduct of the election through both manipulation of voter rolls and the fraudulent stuffing of ballot boxes. To facilitate the ultimate creation of pro-Magufuli votes, the government had to manipulate and expand lists of registered voters in

¹⁹ *Supra*, note 5.

²⁰ *Supra*, note 5.

advance of the election. This effort was intended to increase the total number of registered voters, such that the government could then add ballots to ballot boxes without it appearing that there were too many votes cast. Clear examples of this manipulation are evident in Zanzibar. The Zanzibar Electoral Commission (ZEC) has recently released a list of registered voters showing a total of 556,352. However, when the actual figures from the lists of registered voters posted in all the polling stations across the province are added together, the total number of registered voters is only 448,533. The government has, thereby, “created” at least 117,000 fake voters and, subsequently, used these fraudulent registrations to pad vote totals in favour of Magufuli.

In the weeks before the election, President Magufuli’s government began a systematic operation to add pro-Magufuli ballots to ballot boxes across the country. Information received from government sources reveals that the NEC, National Intelligence Security Service (TISS), and CCM party leaders implemented a plan to directly rig the election. The informant reported a meeting on 21 October in Mabibo, Dar es Salaam (NIT building) involving all principal returning officers (responsible for vote counting) and the electoral secretaries for Dar es Salaam. At this meeting, these officials were given unambiguous instructions on how pre-filled ballots were to be stuffed into ballot boxes before voters started casting their votes on the morning of October 28th. This same source explains that these returning officers were instructed to arrive at their respective polling stations by 7am on election day, where they would find polling agents from the ruling CCM party already present. Each of these agents was provided 10 to 20 ballots pre-filled in favour of President Magufuli and already stamped by the NEC.

In each polling station all agents and NEC staff were allowed to cast their ballots in advance of regular voters being admitted to the polling place. Each CCM agent was instructed to insert the pre-printed ballots along with their own ballot into the ballot box. There is evidence that similar instructional meetings occurred nationwide in advance of the election to ensure an adequate number of fraudulent ballots were placed in ballot boxes on October 28th to allow Magufuli’s victory.

Evidence from Tanzania throughout the day of the election confirms the efforts of President Magufuli’s government to directly interfere with the casting and tallying of ballots. We are in possession of reports on various social media platforms and through direct testimony that CHADEMA agents were being denied entry to the polling stations. Further, at least 30 CHADEMA agents have been arrested by police in Kavuu constituency as they headed to the polling station. We have also seen video recordings of citizens who have successfully confiscated bags full of filled ballots, all voting for CCM, outside polling stations.

On 29 October, the Tanzania Elections Watch shared its preliminary observations on the previous day’s election.²¹ It expressed concerns about events and reports during the election day which dampened the credibility of the electoral process, including:

- “Shutdown of the internet on the 27th of October. Additionally, Twitter reported that it had been shut down in Tanzania on the same day.
- Reported deaths of innocent civilians in Tanzania and mainly in the Islands of Pemba and Unguja.
- Complaints of opposition polling agents being denied from observing voting in polling stations with some reportedly attacked or arrested while exercising their mandate.
- The reported arrests of candidates including Halima Mdee, Upendo Peneza on election day.

²¹ Statement by Tanzania Elections Watch Panel on Observations made during the Election Day in Tanzania, 29 October 2020. <https://tanzaniaelectionswatch.org/2020/10/29/statement-by-tanzania-election-watch-panel-on-observations-made-during-the-election-day-in-tanzania/>

- The deployment and participation of the Tanzanian military in an erstwhile civilian process as witnessed predominantly in Zanzibar.
- Mobile service limitations of the free flow of information through short messaging services.”

9. THE RESULTS OF ELECTION FRAUD MUST NOT BE RECOGNIZED

The grave threat to democracy in Tanzania represented by President Magufuli’s conduct of the October 2020 election is well encapsulated by a recent statement by Amnesty International’s Director for East and Southern Africa: “The use of law to systematically and deliberately clamp down on people’s inalienable human rights, especially in an election season, is an extremely worrying and unhealthy sign for a country positioning itself for greater growth and development.”²² Ultimately, the future of democracy in Tanzania turns on the international community taking a unified stand against the Tanzanian government’s electoral manipulation and violations of human rights.

We call on the Commonwealth Secretariat not to recognize President Magufuli’s purported victory. Specifically, we ask that you do not congratulate him on any such “re-election”, but that you launch an inquiry into the conduct of the election in Tanzania, and that you publicly call for the restoration of human rights, fair electoral processes, and democracy in Tanzania. While a strong international stand against the results of 28 October’s manifestly fraudulent election may not reverse the results thereof, they are an indispensable step toward ensuring the return of democracy in Tanzania.

10. CONCLUSION: REQUEST FOR INTERVENTION

The above stated serious and persistent violations by President Magufuli’s government violate the Commonwealth’s core values and principles enshrined in the Commonwealth Charter to which Tanzania had acceded.

President Magufuli and the CCM party continue to act with clear impunity since coming into power. The Commonwealth Secretariat and its CMAG bears a special responsibility to intervene. The Commonwealth holds special status in Sub-Saharan Africa, with the promise of increased international attention should it see fit to take action and investigate these grievances.

Pursuant to the 1995 Millbrook Commonwealth Action Programme on the Harare Declaration – a policy designed to fulfil more effectively the democracy and development commitments contained in the Harare Declaration – the CMAG has the power to bring a Commonwealth country in “serious or persistent violations of Commonwealth values” onto its formal agenda. Furthermore, it has the power to monitor and suspend governments in breach of the Harare Declarations and the Commonwealth’s core values. Tanzania has so far demonstrated its disregard for these core values and its own democratic norms.

In light of these violations, we are of the view that the case for intervention is clear and unambiguous, and respectfully request the following:

- An immediate public expression by the Secretary-General of the Commonwealth’s collective expression of concern and disapproval;
- Immediate contact by the Secretary-General with the Government of Tanzania to coordinate the arrival and examination by the CMAG delegation to assess the situation in Tanzania;
- Immediate referral to the CMAG for review and action on the full range of effective remedies for sustaining the Commonwealth’s core values and principles in Tanzania;

²² *Supra* note 5.

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- The use of the Secretary-General's good Office to encourage bilateral demarches by members of the Commonwealth with the Government of Tanzania, both to express disapproval and to support the restoration of the Commonwealth's core values and principles;
- Provisional suspension of Tanzania from the Councils of the Commonwealth subject to the report of the CMAG following a fact-finding mission;
- A full suspension should Tanzania fail to implement immediate improvements following the mission's findings; and
- Any and all such further action that the Secretary-General and the CMAG sees fit to implement.

These violations of Commonwealth values and principles without impunity are destroying the constitutional separation of powers and its check and balances on the power of the presidency, creating real fears and uncertainty over Tanzania's future as a democracy. We await your valued consideration.