

His Excellency John Magufuli
President of The United Republic of Tanzania

BY EMAIL ONLY

23 October 2020

Dear President Magufuli:

As you know, 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**") party.

We write to inform you that the Government of Tanzania's conduct in the runup to the 2020 general elections, scheduled for next Wednesday, 28 October 2020, has undermined the democratic process in Tanzania and so tarnished the electoral process as to render the forthcoming elections neither free nor fair. Your oppressive policies have unduly restricted the political, civil, and human rights of Tanzanian citizens. In recent months, your government has arbitrarily arrested opposition candidates on false charges and stripped them of their international human rights to freedom of assembly, association, and movement. Your government continues to infringe the rights of outspoken critics, including our client Tindu Lissu. We now understand the CCM party, in conjunction with national election officials, has developed a plan to directly alter vote tallies next week. These actions have undermined the integrity of the forthcoming election, casting serious doubt on whether the results thereof will reflect the democratic will of the people of Tanzania. We write to urge you to reverse course immediately to ensure the integrity of the election and note that there will be serious international consequences for holding a sham election.

Evidence on the ground makes clear that the CCM is committed to declaring victory at the expense of Tanzanian democracy. Your government's efforts to undermine the election begin with the illegal exclusion of opposition candidates. The National Election Commission has refused to allow many opposition politicians to even run for office on the pretextual basis of failing to meet electoral requirements. Several opposition parties, including the CHADEMA party, have indicated that literally hundreds of their candidates have been disqualified from participating in the upcoming general election. 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 National Election Commission has blocked appeals of these disqualifications. Again, Mr. Kigaila has detailed the experience of one CHADEMA candidate, who sought to appeal his disqualification and instead was met with an Election Officer who locked the election commission office and left without returning, thereby making the filing of an appeal impossible.¹ Another opposition party, Alliance for Transparency and Change ("**ACT Wazalendo**"), has similarly indicated that most of their candidates had been "objected" to by the National Election Commission and were therefore not able to participate in the election.² Professor Ibrahim Lipumba, the candidate for President of the Civic United Front ("**CUF**") opposition party, said his party received reports of candidates being challenged

¹ 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>

² Tanzanian opposition alleges irregularities in candidates' enrollment. Reuters.com, 21 October 2020, <https://www.reuters.com/article/us-tanzania-elections-irregularities-idUSKBN25O2OS>

by authorities or even having their nomination forms stolen from them before submission by unknown individuals.³

Your government's efforts to undermine the integrity of the election reach beyond disqualification of opposition candidates to include direct manipulation of the voting process. It appears your government seeks to ensure that voting stations have no agents from opposition parties to question fraudulent votes for CCM candidates. Under the National Electoral Commission's (NEC) current policies, polling agents from areas of the country with strong opposition support have been required to travel to other regions of the country to appear before Returning Officers (senior election officials) to have their electoral functions confirmed. The imposition of this requirement breaches the National Election Law, according to which polling agents should be confirmed in their respective local districts before Assistant Returning Officers (more junior election officials). A letter was also sent from the Election Returning Officer for your home district of Chato, informing CHADEMA's District Secretary General 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 CCM has been identified. This discriminatory treatment makes it far more difficult for agents representing opposition candidates to be confirmed and privileges the candidacies of the CCM.

So too, your government is intentionally giving incorrect information to or changing rules and regulations for political agents of opposition parties. 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 is closed, making it impossible for agents to be confirmed. Similar misrepresentation, arbitrary rule changes, and fraudulent conduct is occurring across the country.

There is also growing evidence of the intentional manipulation of lists of registered voters by governmental authorities in order to facilitate fabricated votes in your favour. Clear examples of this manipulation of voting roles is evident in Zanzibar. The Zanzibar Electoral Commission (ZEC) has recently released a list of registered voters in Zanzibar showing a total of 556,352 voters. However, when the actual figures from the lists of registered voters posted in all the polling stations across the islands are added together, the total number of registered voters is only 448, 533. It appears your government has "created" at least 117,000 fake voters and will use these fraudulent registrations to pad vote totals in your favour.

As the election draws closer, your government has been arresting opposition leaders without due cause with the intent of limiting 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 were charged with "endangering the peace."⁴ 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 prevents him from participating in political discourse in advance of the election.

³ *Supra* note 1.

⁴ Tanzania: Freedoms Threatened Ahead of Elections. HRW.org, 21 October 2020, <https://www.hrw.org/news/2020/09/02/tanzania-freedoms-threatened-ahead-elections>

Your government use of the police to intimidate the opposition permeates all levels of the political space in the country. In July of this year, 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 Mbilyni, a CHADEMA party candidate, was also arrested and released in August for an "unauthorized demonstration" because he was accompanied by supporters as he collected his nomination papers.⁵ Even more recently, on October 21, four CHADEMA agents have reportedly died and others badly injured in a highly suspicious car "accident" in the town of Sumbawanga as they were going to take an oath for the upcoming elections. The circumstances of the incident are deeply concerning and it appears your government may be willing to go to any length to undermine democracy and the electoral process.

Your government's treatment of our client, Mr. Lissu, over the past several years is indicative of your efforts to undermine all political opposition through intimidation, harassment, and violence. Mr. Lissu has previously been subjected to regular and serious acts of intimidation from forces affiliated with the government in response to his vocal criticisms of your administration. 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 Mr. Lissu's residence was normally heavily guarded, 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. Your government has failed to protect Mr. Lissu and to investigate the attempt on his life. It may well be complicit in the assassination attempt.

Your government's failure to protect Mr. Lissu and, thereby, its effort to undermine opposition candidates and democracy itself, continues today. 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 National Police Chief has gone on record to state that the police will 'get' Mr. Lissu. This week a video resurfaced from a political campaign rally evidencing threats made by your nephew, Kheri James, stating that if Mr. Lissu mobilizes citizens to contest your claim of an electoral victory "they will inject him with poison."⁶ Kheri James has made a number of similar statements inciting violence against your critics over the past five years. Nonetheless, he was eventually promoted to lead the CCM youth organization.

Political contestation today in Tanzania is virtually impossible, all but ensuring the election will be a sham. On the day of Mr. Lissu's return to Tanzania, your government passed new legislation making the organization, planning or even support of any form of demonstration online, illegal. The timing of this move is no coincidence. Your government seeks to restrict political participation by opposition parties ahead of the October elections. It seeks to avoid public criticism in online fora in the run up to the election. These new restrictions, in conjunction with existing limitations on public demonstrations

⁵ 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/>

⁶ 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

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 this October. This new law banning online demonstrations is yet another example of your administration's agenda to prevent a free and fair election, limit the activities of opposition candidates, and violate fundamental rights and freedoms of Tanzanian citizens.

Your government's conduct towards the political opposition and its effort to undermine democratic elections blatantly disregards the country's domestic and international legal obligations. Your government purports to uphold to its international human rights obligations, but its actions speak volumes. Pursuant to Tanzania's obligations under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' rights, it must allow freedom of speech and assembly and it must allow for participation in government and electoral processes. Yet, CCM continues to violate these obligations, restricting the political participation of opposition groups and inciting violence against opposition candidates. Earlier this month Amnesty International released a detailed report entitled *Lawfare-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 in breach of internationally protected freedoms of expression and assembly.⁷

After attempting to side-line the opposition, your government has now turned to the targeting of journalists and the press. 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.⁸

Your government's actions demonstrate your objective of undermining the October 2020 election and democracy in Tanzania. Should these efforts prove inadequate to determine the outcome, it appears your government is poised to directly alter vote tallies later this month. Internal information received from government sources reveals that the NEC, National Intelligence Security Service (TISS), and CCM leaders are coordinating a plan to directly rig the election. The informant has reported that a meeting was held on 21 October in Mabibo, Dar es Salaam (NIT building) involving all principal returning officers (responsible for vote counting), their assistants and secretaries for Dar es Salaam, where they were given instructions on how pre-filled ballots will be stuffed in ballot boxes before voters start casting their votes. This same source explains that these returning officers must reach their respective polling stations by 7am on voting day, where they will find CCM agents already present. Each of these agents have been given between 10 to 20 pre-filled ballot papers already stamped by the NEC. In each polling station all agents and NEC staff will be allowed to cast their ballots first, before the other voters are admitted to the polling place. Each CCM agent has been instructed to insert the forged and pre-printed ballots along with their own voting papers into the ballot box. This systematic and illegal fraudulent voting will be completed between 7 and 7:30am, before the official start of voting at 8am. Our informant further notes that this strategy will be applied across the country under tight security. Similar instructional meetings are being undertaken nationwide such that an adequate

⁷ *Supra*, note 5.

⁸ *Supra*, note 5.

number of fraudulent ballots are placed in ballot boxes to ensure the CCM gets at least 60% of all votes in each polling station, notwithstanding actual support for opposition candidates.

The NEC has also amended regulations requiring it to provide every polling agent with a copy of the vote tallying for each polling station signed by NEC officials and all polling agents. This is no longer a requirement, thus ensuring that there is no independent evidence anywhere of the actual votes cast and counted at every polling station. Additionally, Mr. Kaijage, the Chair of NEC has banned the use of smart phones from polling stations when no such law exists. These illegal actions by the NEC are clearly an afterthought, as it is currently too late for them to legislate, he has decreed these laws in line with the NEC's fraudulent practices.

This plan to subvert the election on polling day explains your government's aforementioned efforts to limit the number of certified opposition agents at polling places. By ensuring that the opposition is largely unrepresented at the polls, it will be far easier for the CCM to tamper with the votes cast on election day. Our informant confirms that the police force has been instructed to make sure no one interferes with this plan and any remaining opposition agents who raise concerns about voting irregularities will be removed from their polling stations.

The grave threat to democracy in Tanzania today is well encapsulated by a recent statement by Amnesty International's Director for East and Southern Africa, Deprose Muchena. Commenting on Tanzania's current political situation, he notes: "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."⁹ We join Amnesty in its grave concern for the future of democracy and human rights in Tanzania.

We call on you and your government to immediately cease acts, such as those detailed in this letter, that threaten the integrity of the October 2020 elections and the state of democracy in Tanzania. We are, however, deeply concerned that your actions have already left the election fundamentally flawed in flagrant violation of Tanzanian law, international human rights law, and the most basic principles of a democratic society. We remind you, as we have noted in our previous correspondence, that you and your government face the very real threat of international sanctions and punishments for your violations of international law and democratic governance. We will pursue every avenue available to shine light on the political interference in the electoral process by your government, to trigger international investigation by relevant United Nations Special Rapporteurs and the African Commission on Human Rights, and to advocate for international sanctions against those responsible for these abuses.

Sincerely,

Robert R. Amsterdam



Founding Partner, Amsterdam & Partners LLP

⁹ *Supra* note 5.