

**OPEN LETTER TO DIPLOMATIC MISSIONS ON THE ONGOING POLITICAL
SITUATION IN THE UNITED REPUBLIC OF TANZANIA AND THE DISREGARD FOR
THE RULE OF LAW AHEAD OF THE ELECTIONS**

**URGENT ACTION APPEAL REGARDING CCM CONDUCT TOWARDS OPPOSITION
PARTIES AND ELECTORAL FRAUD**

Donald J. Wright, United States Ambassador to the United Republic of Tanzania;
Pamela O'Donnell, High Commissioner of Canada in the United Republic of Tanzania;
David Concar, British High Commissioner to the United Republic of Tanzania;
Frédéric Clavier, French Ambassador to the United Republic of Tanzania,
Regine Hess, Ambassador of Germany in the United Republic of Tanzania.

23 October 2020

Ambassadors:

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 alert you to the fact that the upcoming Tanzanian presidential elections, scheduled for next Wednesday, 28 October 2020, will not meet the internationally recognized standards for a free and fair election. As you are no doubt aware, the ruling Chama Cha Mapinduzi ("**CCM**") party and government of President Magufuli have repeatedly resorted to oppressive policies that unduly restrict the political, civil, and human rights of Tanzanian citizens. In recent months, various opposition candidates have been arbitrarily arrested on false charges and stripped of their international human rights to freedom of assembly, association, and movement. CCM and Magufuli's regime continues to punish and infringe the rights of outspoken critics of the government and of the electoral process, including our client Tundu 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 denounce the Government of Tanzania's ongoing interference with the election and to refrain from recognizing the results of the election as legitimate.

Evidence on the ground makes clear that the CCM is committed to announcing a victory for Magufuli at the expense of Tanzanian democracy. The Tanzanian 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 in Tanzania, 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 by authorities or even having their nomination forms stolen from them before submission by unknown individuals.³

Efforts to undermine the integrity of the election reach beyond disqualification of opposition candidates to include direct manipulation of the voting process. In Tanzania, that process relies on party-affiliated “agents” at polling locations. Ultimately, the government seeks to ensure that voting stations have no agents from opposition parties to question fraudulent votes for the CCM. 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 Magufuli’s 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 the ruling party’s candidates 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 ruling party, who are not being subjected to similar requirements.

So too, the 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 favour of the ruling party. 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 the government has “created” at least 117,000 fake voters and will use these fraudulent registrations to pad vote totals in their favour.

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>

³ *Supra* note 1.

As the election draws closer, the 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.

The Government of Tanzania’s 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 Mbilinyi, 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 that Magufuli’s regime will go to any length to undermine democracy and the electoral process.

The Government of Tanzania’s treatment of our client, Mr. Lissu, over the past several years is indicative of their 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 criticism of President Magufuli. 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. The government has failed to protect Mr. Lissu and to investigate the attempt on his life. At the very least the Tanzanian Government was complicit.

The Government of Tanzania’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 Kheri James (President Magufuli’s nephew), stating that if Mr. Lissu mobilizes

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>

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/>

citizens to contest a claimed electoral victory by President Magufuli “they will inject him with poison.”⁶ Kheri James has made a number of similar statements inciting violence against President Magufuli’s critics over the past five years. Nonetheless, he was eventually promoted to lead the CCM youth organization, which is thought to be behind many abductions, torture and violence against opposition members.

Political contestation today in Tanzania is virtually impossible, all but ensuring the election will be sham. On the day of Mr. Lissu’s return to Tanzania, the 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. The Tanzanian 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 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 President Magufuli’s political agenda to prevent a free and fair election, limit the activities of opposition candidates, and violate fundamental rights and freedoms of Tanzanian citizens.

The Government of Tanzania’s conduct towards the political opposition and its effort to undermine democratic elections blatantly disregards the country’s domestic and international legal obligations. The Tanzanian 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, the Tanzanian 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

The actions of the Tanzanian Government demonstrate the objective of undermining the October 2020 election and democracy in Tanzania. Should these efforts prove inadequate to ensure a Magufuli victory, the Government of Tanzania is poised to directly alter vote tallies later this month. Internal information received from government sources reveals that the NEC, National Intelligence Security

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

⁷ *Supra*, note 5.

⁸ *Supra*, note 5.

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 number of fraudulent ballots are placed in ballot boxes to Magufuli gets at least 60% of all votes in each polling station, notwithstanding actual support for opposition candidates. There are over 80,000 polling stations in Tanzania and if at every one of these there is a stuffing of 20 votes, total votes for Magufuli will be 1.6 million out of the 29 million registered voters. If the turnout is 70 %, he already has about an 8% advantage before the votes are even cast.

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 the Government of Tanzania's earlier 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 government 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, Deprese 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, as representatives of the diplomatic community in Tanzania to recognize the threat democracy posed by the Government's actions in advance of the elections. We ask you to scrutinize the facts on the ground and to raise these concerns directly with the Magufuli government. We seek your support in remedying the gross violations to the integrity of the forthcoming election. We urge

⁹ *Supra* note 5.

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you not to recognize the results of an election that is fundamentally flawed in flagrant violation of Tanzanian law, international human rights law, and the most basic principles of a democratic society. To be silent in the face of the deteriorating political situation endangers the rights and lives of Tanzania's citizens and the prospects for democracy in Tanzania and beyond.

Sincerely,

Robert R. Amsterdam



Founding Partner, Amsterdam & Partners LLP