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## FORWARD

This whitepaper will discuss the concerted attempt by the Chama Cha Mapinduzi (“CCM”) party and president Magufuli to stifle the voice of the Tanzanian people and transform Tanzania from a paradise into a prison. It is not an exaggeration to suggest that the laws we outline in this whitepaper to ensure the continued oppressive rule of this regime is nearly without parallel in the world today. This can only suggest that the government knows full well that whatever popularity it can now exhibit is only manufactured and greased by that small group benefitting economically from white elephant mega-projects that are being developed without care or concern for the lives of the average citizens of Tanzania.

The latest insult to the integrity of the election has been by the hand of the National Election Commission (“NEC”), which has illegally disqualified hundreds of opposition candidates and suspended Tundu Lissu’s campaign in a further brazen attempt to steal an election they know they have no hope of winning fairly.

Citizens must not sit idly while their rights, hopes, and dreams are eviscerated by a political party determined to stay in power at any cost.

Tanzania – that price is too high. Stand up.

*-Robert Amsterdam*

## EXECUTIVE SUMMARY

In 1995, the United Republic of Tanzania held its first multi-party presidential elections, ending decades of constitutionally mandated, single-party rule by the Chama Cha Mapinduzi (“CCM”) party. The country’s political liberalization brought great hope that Tanzania was moving in a more democratic direction. However, for the next fifteen years, the ruling CCM party won large parliamentary majorities and never faced a serious challenge to its control over the presidency.

In 2015, all this changed. The presidential election that year was the most competitive in Tanzania’s history, helped by a successful party-building effort by the Chama Cha Demokrasia (“Chadema”) party over the previous decade, an opposition coalition that endorsed a single presidential candidate, and a series of grand corruption scandals and infighting blighting the ruling party. Nevertheless, John Magufuli, CCM’s candidate, won the presidency. Despite numerous handicaps inherent in Tanzania’s political system strongly favoring the ruling party, international election observers concluded that the vote itself was largely fair on Tanzania’s mainland. But on the semi-autonomous island of Zanzibar, where CCM looked to be on the verge of a serious defeat, the elections were abruptly called off, a re-vote was carried out, and CCM was declared victorious. Some observers have pointed to Zanzibar proved as a harbinger of the blatantly undemocratic tactics which have engulfed the entire United Republic since Magufuli took office.

Since 2015 under Magufuli – a former Works Minister nicknamed “The Bulldozer” by former President Jakaya Kikwete – the great hopes for Tanzania’s democratic development and political liberalization have been quashed by a constant stream of measures intended to silence independent media, constrain political parties, and clamp down on freedom of speech both in the media and online. The Magufuli government has also politicized the judiciary and the powerful electoral commissions, both on the mainland and in Zanzibar, where political freedoms and elections have long been under threat.

In addition, members of the opposition have faced serious threats to their life and safety, most notably in 2017, when Tundu Lissu was shot multiple times and was forced into exile where he received life-saving medical care. The political offices of Chadema and other opposition parties have also faced attacks, and President Magufuli has made no secret of his intention to “bulldoze” the media, threaten the opposition, and clamp down on all forms of dissent in Tanzania. In June 2020, Chadema’s chairman Freeman Mbowe was attacked by armed men outside his home in Dodoma in an eerily similar fashion to that against Tundu Lissu in 2017. In two separate incidents in February 2018, Chadema officials were hacked to death with machetes while campaigning before local elections.

Many Chadema members have also faced charges of sedition, incitement to violence, holding an “illegal rally,” and other politicized charges. Tundu Lissu was arrested eight times in the year prior to his attempted assassination, and Freeman Mbowe – alongside Chadema MP Esther Matiko – was jailed for four months for allegedly breaching the terms of their bail. Other

Chadema politicians and party officials have faced similar charges, harassment, and threats to their lives.

In July 2020, Tundu Lissu returned to Tanzania after three years in exile in Belgium. The next month, he was nominated to be Chadema's candidate for the presidency. Almost immediately upon his return, he has faced threats to his safety, and spurious charges have been launched against him in an effort to thwart his candidacy. Furthermore, the electoral commission appeared to be on the verge of rejecting Tundu Lissu's candidacy, when it spent many hours poring over his application after approving that of Magufuli in a mere couple of minutes. The courts were also weaponized against Lissu, when a hearing for sedition charges against him was scheduled at the same time he was meant to appear at the electoral commission to register his candidacy.

Owing to severe pressure on the government, Tundu Lissu's candidacy was approved on August 26, 2020, but in the midst of a raft of undemocratic measures since 2015, the specter of a free and fair election still remains highly uncertain. As with local elections in 2019 and parliamentary by-elections in 2018, the election commission has engaged in mass-disqualification of opposition candidates on dubious grounds while approving all CCM candidates registering to run for seats in the National Assembly.

In late September, the National Election Commission ("NEC") ramped up its harassment of Tundu Lissu, claiming that statements he has made on the campaign trail are objectionable. The NEC's Director of Elections Wilson Mahera Charles – who is supposed to remain politically neutral as an election official – has made overtly political statements about the desire of Tanzanian voters, including when he declared on September 28 of Lissu, "You spend a lot of time announcing suspicions instead of policies, you spend a lot of time deceiving Tanzanians and workers...Tanzanians now want better roads, Tanzanians want electricity projects...Tanzanians do not want 'bla bla.'" Chadema rallies have also come under attack by the security services and fears have been raised that Chadema poll agents will not be permitted to observe polling stations as demanded by law.

On October 4, the Ethics Committee of the NEC ordered the suspension of all campaigning by Tundu Lissu for seven days over claims that Lissu uttered statements in violation of ethics regulations, and the registrar of political parties – which was handed immense power since the 2019 amendments to the Political Parties Act – is monitoring closely ongoing discussions between Chadema and fellow opposition party ACT-Wazalendo as they discuss potential cooperation in this month's election. A rally held at the end of September came under attack by police unleashing teargas on Chadema supporters, and the NEC's Director of Elections alluded to further police violence.

It has become yet more clear that the October 2020 elections stand little chance of being administered freely and fairly. We are calling on the international community and others to demand proper monitoring at the polls, and to consider more severe measures against Magufuli's government which has violated basic covenants of human rights and fundamental freedoms. Such egregious violations have taken place not only with respect to this election, but through

brazen attacks against members of the opposition, journalists, and human rights activists since John Magufuli ascended to the presidency in 2015.

## I. TANZANIAN POLITICAL CONTEXT

In 1961, Tanganyika – Tanzania’s mainland – became an independent state, and in 1963, the island of Zanzibar achieved independence. In 1964, Zanzibar and Tanganyika merged to form The United Republic of Tanzania.<sup>1</sup> Tanzania’s president is directly elected to a maximum of two five-year terms. The prime minister is appointed by the president and serves as the head of the cabinet.<sup>2</sup> The legislative branch is made up of the unicameral National Assembly.<sup>3</sup> The island of Zanzibar enjoys a considerable degree of autonomy, with its own elected president, who can serve a maximum of two five-year terms and a cabinet called the Supreme Revolutionary Council. Zanzibar’s parliament, the House of Representatives, is made up of elected and appointed members.<sup>4</sup>

### A. CCM and Single Party-Rule (1965-1992)

The ruling party, Chama Cha Mapinduzi (“CCM”) and its prior iterations have ruled uninterrupted since Tanzania’s independence and it remains the longest-ruling party in Sub-Saharan Africa.<sup>5</sup> The founding father and independence hero of Tanzania, Julius Nyerere ruled from 1965 until he voluntarily stepped down from the presidency in 1985. CCM was formed when the Tanganyika African National Union (“TANU”) merged with the Afro-Shirazi Party (“ASP”) in Zanzibar to form a single national party in 1977.<sup>6</sup>

In 1977, the same year TANU and ASP merged to form the CCM party, Tanzania adopted a constitution that confirmed the CCM’s position over the state and the United Republic’s status as a single-party state.<sup>7</sup>

### B. Emergence of a Multi-Party System (1992-2015)

In June 1992, following the advice of Nyerere – who retained considerable influence after stepping down in 1985 – Tanzania amended its constitution to allow for a multi-party democratic system through the Political Parties Act.<sup>8</sup> In 1995, Tanzania held its first competitive election since 1965, but every subsequent vote has strongly favored CCM candidates. During the 1995 election campaign, CCM’s candidate Benjamin Mkapa, who went on to serve two terms as president from 1995 to 2005, declared that his party “didn’t need to cheat because it was quite certain that CCM was going to win.”<sup>9</sup>

<sup>1</sup> CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: TANZANIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html> (last visited Sep. 3, 2020).

<sup>2</sup> Kenneth Ingham et al., *Tanzania*, ENCYCLOPÆDIA BRITANNICA (Mar. 17, 2020), <https://www.britannica.com/place/Tanzania>.

<sup>3</sup> DAN PAGET, THE AUTHORITARIAN TURN IN TANZANIA 2 (2017), <https://core.ac.uk/download/pdf/227337153.pdf>.

<sup>4</sup> Ingham et al., *supra* note 2

<sup>5</sup> PAGET, *supra* note 3, at 2.

<sup>6</sup> ARRIGO PALLOTTI, *Lost in Transition? CCM and Tanzania’s faltering democratisation process*, 35:4, JOURNAL OF CONTEMP. AFRICAN STUDIES, 544, 551 (2017), <https://www.tandfonline.com/doi/abs/10.1080/02589001.2017.1376043>.

<sup>7</sup> PALLOTTI, *supra* note 6, at 551.

<sup>8</sup> Melanie O’Gorman, *Why the CCM won’t lose: the roots of single-party dominance in Tanzania*, 30:2, JOURNAL OF CONTEMP. AFR. STUDIES 313, 316-17 (2012).

<sup>9</sup> *Id.*, at 123.

Prior to the 2015 election which saw John Magufuli win the presidency, many observers have referred to CCM as a “relatively benign hegemon”<sup>10</sup> However, the party has “developed sophisticated legal mechanisms to ensure its continued control through the regulation of political competition, civil society, and the media.”<sup>11</sup> Essentially, “state power has been used and abused to preserve CCM’s hegemony.”<sup>12</sup>

In the 1960s, TANU/CCM– implemented “an extensive apparatus that paralleled all state institutions down to the village level.”<sup>13</sup> This system included what is known as the “ten-cell system” in which party organization is brought to the neighborhood level. The leader of each “ten-cell” is known as *balози*, and during the single-party system *balози* played an essential party-state role, and as suggested by some observers, served as a control mechanism for CCM that has outlasted the single-party era in Tanzania.<sup>14</sup> Chadema Central Committee member Mwesiga Baregu remarked that “CCM has a grasp on their [voters] minds – from the 10-house cell.”<sup>15</sup> Partially as a result of these networks built during the single-party era, CCM enjoys a highly organized, nationwide grassroots political infrastructure and spends lavishly during electoral campaigns – luxuries that opposition parties typically lack the financial means to rival.

### C. Chama Cha Demokrasia (Chadema)

The Chama Cha Demokrasia party (“**Chadema**”) was founded in 1992 by Edwin Mtei, former Minister of Finance and Governor of the Central Bank of Tanzania immediately after multi-party politics was legalized.<sup>16</sup> The party’s name translates to “The Party for Democracy and Development.”

Especially in the early years of the post-1992 period, Chadema – along with other opposition parties – struggled to raise sufficient funds to organize and compete against CCM’s formidable political machine.<sup>17</sup> The election of Freeman Mbowe to be Chadema party chairman in 2004 was a turning point. Tundu Lissu remarked that “one of the most important contributions that Chairman Mbowe has brought to Tanzanian politics is to make the opposition financially competitive.”<sup>18</sup> Mbowe’s ascension to Chairman began the period of Chadema’s expansion of its party apparatus at the local level<sup>19</sup>

<sup>10</sup> BARAK HOFFMAN & LINDSAY ROBINSON, *Tanzania’s Missing Opposition*, 20:4, JOURNAL OF DEMOCRACY, 123, 124 (2009), <https://muse.jhu.edu/article/362642>.

<sup>11</sup> *Id.*, at 128.

<sup>12</sup> PAGET, *supra* note 3, at 4, emphasis added.

<sup>13</sup> JOEL BARKAN, BEYOND CAPITALISM VS. SOCIALISM IN KENYA AND TANZANIA 17 (1994).

<sup>14</sup> KEVIN CROKE, *Tools of Single Party Hegemony in Tanzania: Evidence from Surveys and Survey Experiments*, 24:2 DEMOCRATIZATION, 189, 2017, <https://scholar.harvard.edu/kcroke/publications/tools-single-party-hegemony-tanzania-evidence-surveys-and-survey-experiments>.

<sup>15</sup> YONATAN MORSE, *Party matters: The Institutional Origins of Competitive Hegemony in Tanzania*, 21:4, DEMOCRATIZATION, 655 (2017), <https://www.tandfonline.com/doi/abs/10.1080/13510347.2013.764285>.

<sup>16</sup> EDWIN MTEI, FROM GOATHERD TO GOVERNOR: THE AUTOBIOGRAPHY OF EDWIN MTEI 197 (2009).

<sup>17</sup> DAN PAGET, *The Authoritarian Origins of Well-Organized Opposition Parties*, 118:473, AFRICAN AFFAIRS 692, 705 (2019).

<sup>18</sup> *Id.*, at 706.

<sup>19</sup> *Id.*, at 706-7.



By the 2010 presidential elections, Chadema saw its voter share rise from 6 to 27 percent, helped by the party's rapidly expanded organizational capacity as well as a series of high-profile corruption scandals engulfing CCM.<sup>20</sup> From 2011, Chadema set out to organize local party organs and work at further developing party infrastructure. The campaign, known as "*Chadema ni Msingi*" ["Chadema is the Foundation"] aimed to form *msingi*, or foundations, which are equivalent to CCM's *balozi*. The party set out to establish 17,000 branches, with 67,000 party primaries with 580,000 *msingi*, which would operate at the ten-cell level like CCM's *balozi*.<sup>21</sup> This effort played a significant role in making the 2015 election the most hotly contested in the country's democratic history.

## II. POST-2015 TANZANIA: DESCENT INTO AUTHORITARIANISM

### A. The *Katiba* Debate and the 2015 Elections

The 2015 Presidential election was the most competitive in Tanzania's history.<sup>22</sup> Opposition parties formed a coalition known as *Umoja wa Katiba ya Wananchi* (Coalition of Defenders of the People's Constitution, or "**Ukawa**"), and nominated high-profile CCM defector to Chadema and former Prime Minister Edward Lowassa as their candidate.<sup>23</sup>

Ukawa was formed in the wake of a controversy over a change to Tanzania's constitution, or *katiba*.<sup>24</sup> The president at the time, Jakaya Kikwete, made a review of the constitution a cornerstone of his 2010 presidential campaign, and in March 2011, parliament passed the Constitutional Review Act ("**CRA**"). In April 2012, a Constitutional Review Commission ("**CRC**") was appointed.<sup>25</sup> The CRC travelled across the country and held consultations with over 1.4 million people, triggering a debate over Zanzibar's autonomy and other constitutional questions,<sup>26</sup> such as the right of independent candidates to stand for office.

CRC concluded its consultations by recommending the formation of a third branch of government for Tanzania's mainland,<sup>27</sup> but CCM rejected the conclusions of the CRC. This triggered a boycott of the Constituent Assembly – where the constitutional change was being debated – by the opposition.<sup>28</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, at 708.

<sup>22</sup> Michaela Collord, *Tanzania's ruling party wins election (again), but poll is annulled in Zanzibar*, THE CONVERSATION (Oct. 29, 2015), <https://theconversation.com/tanzanias-ruling-party-wins-election-again-but-poll-is-annulled-in-zanzibar-49934>.

<sup>23</sup> Omar Mohammed, *What to watch for in the most competitive election in Tanzanian history*, QUARTZ AFRICA (Oct 23, 2015), <https://qz.com/africa/531643/what-to-watch-for-in-the-most-competitive-election-in-tanzanian-history/>.

<sup>24</sup> Nick Branson, *What's in it for me? Personalities enticements and party loyalties in Tanzania's 2015 elections*, AFRICA RES. INST. (Oct. 2015), [https://media.africaportal.org/documents/ARI\\_Tanzania\\_Elections\\_Briefing\\_Notes\\_download.pdf](https://media.africaportal.org/documents/ARI_Tanzania_Elections_Briefing_Notes_download.pdf).

<sup>25</sup> Laura-Stella Enonchong, *Tanzania's Constitutional Review: A New Era for the Union?*, ICONNECT BLOG (JUL. 2012), <http://www.icconnectblog.com/2012/07/tanzanias-constitutional-review-a-new-era-for-the-union/>.

<sup>26</sup> Branson, *supra* note 24.

<sup>27</sup> *Id.*

<sup>28</sup> Nicodemus Minde, *Opposition Politics in Tanzania and Why the Country will Benefit from a Strong Unified Opposition*, LSE BLOG (Jun. 29, 2015), <https://blogs.lse.ac.uk/africaatlse/2015/06/29/opposition-politics-in-tanzania-and-why-the-country-will-benefit-from-a-strong-unified-opposition/>.

The *katiba* debate “brought the main opposition political parties together in an unprecedented way,” and led to the formation of Ukawa by Chadema, the Civic United Front (CUF) – which primarily draws its support from Zanzibar – NCCR-Mageuzi and the National League for Democracy (NLD).<sup>29</sup> The Ukawa coalition agreed on a joint manifesto and endorsed a common list of candidates for the general election.<sup>30</sup> The opposition also saw a “string of high-profile defectors” from CCM, the headline name being Ukawa’s presidential candidate, Edward Lowassa.<sup>31</sup>

John Magufuli, CCM’s candidate for president in 2015 was little known prior to the election. He was chosen by the party as a compromise candidate between warring factions inside the party<sup>32</sup> and to pacify tribes from the Lake Zone, a region from which Magufuli is descends.<sup>33</sup> Described by former president Kikwete as the “bulldozer”<sup>34</sup> due to his ability to push through infrastructure projects as Works Minister in Kikwete’s government – a name that has stuck with him since becoming president – Magufuli made anti-corruption a hallmark of his campaign. Notably, unlike the others jockeying for CCM’s nomination, Magufuli had no clear factional affiliation within the ruling party.<sup>35</sup>

CCM’s rule has long been characterized by corruption and crony capitalism, fed by intra-party fighting and competition.<sup>36</sup> Since the turn of the century, “[g]rand corruption cases in public finances implicated senior politicians, high-ranking government officials, domestic industrialists, and multinational companies in a series of illegal activities involving bribes, kickbacks, and the theft of public funds.”<sup>37</sup> This included the bombshell 2014 revelation which became known as the Tegeta corruption scandal, in which hundreds of millions of dollars disappeared.<sup>38</sup> Twelve major international donors suspended aid pending a thorough investigation of the scandal.<sup>39</sup>

Chadema’s expanded party apparatus which it had been building since 2003, the Ukawa opposition coalition, and the high-profile defections, internal divisions, and corruption scandals plaguing CCM combined to form the biggest threat to CCM rule in Tanzania’s history. The official tally handed Magufuli a victory with 57.4 percent of the vote, with Lowassa picking up 39.9 percent.<sup>40</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> Branson, *supra* note 24.

<sup>31</sup> PAGET, *supra* note 3, at 2.

<sup>32</sup> *Id.*, at 9.

<sup>33</sup> Elsie Eyakuze, *Why is Tanzania so quiet?*, AL JAZEERA (Nov. 10, 2017), <https://www.aljazeera.com/opinions/2017/11/10/why-is-tanzania-so-quiet/>.

<sup>34</sup> *Id.*

<sup>35</sup> Collord, *supra* note 22.

<sup>36</sup> TRANSPARENCY INTERNATIONAL, OVERVIEW OF CORRUPTION AND ANTI-CORRUPTION IN TANZANIA (2019), <https://knowledgehub.transparency.org/helpdesk/overview-of-corruption-and-anti-corruption-in-tanzania-1>.

<sup>37</sup> HAZEL S. GRAY, *The Political Economy of Grand Corruption in Tanzania*, 114:456 *African Affairs* (2015) 382, 382-3, <https://academic.oup.com/afraf/article/114/456/382/24510>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Tanzania poll: John Magufuli of CCM defeats Edward Lowassa*, BBC (Oct. 29, 2015), <https://www.bbc.com/news/world-africa-34669468>.

### B. Zanzibar 2015 Crisis

While the administration of the 2015 elections were generally regarded to have been fair on the mainland, the situation in Zanzibar was quite the opposite. On October 28, 2015, after voting had completed, the Zanzibar Electoral Commission (“ZEC”) vaguely cited “irregularities,” nullifying elections and rescheduling them.<sup>41</sup> The Civic United Front (“CUF”), the strongest opposition party in Zanzibar, appeared to be winning when the ZEC nullified the election.<sup>42</sup> CCM claimed that there was fraud in Pemba, an island of Zanzibar that historically has strongly supported CUF.<sup>43</sup>

Seif Shariff Hamad, CUF’s candidate for the Zanzibar presidency, declared victory twenty-four hours after the closing of the polls based on the returns of CUF observers at each constituency. These returns were signed by representatives of both parties and the ZEC, signaling a CUF victory.<sup>44</sup> The Zanzibar Law Society (“ZLS”) strongly criticized and questioned the constitutionality of the ZEC’s decision to annul the election.<sup>45</sup>

In March 2016, Zanzibar held a re-run of its presidential election, and with the CUF boycotting the re-run, CCM won in a landslide.<sup>46</sup> The CCM incumbent president Ali Mohamed Shein took 91.4 percent of the vote in the re-run.<sup>47</sup> Events in 2015 in Zanzibar “clearly showed the determination of the CCM in Zanzibar to maintain political power at any cost.”<sup>48</sup> An African Union election monitoring mission for the re-run noted that campaigning and rallies were banned on security grounds. Despite the opposition refusing to participate in the re-run, the ZEC did not remove opposition parties and candidates from the rolls, claiming that the opposition did not carry out the necessary procedures for withdrawal from the re-vote.<sup>49</sup>

The 2015 election in Zanzibar was not an irregularity. Every election in Zanzibar since 1995 has faced allegations of rigging or has resulted in violence. In 1995, international observers found evidence that the CUF’s leader won the election but the ZEC rigged the vote in CCM’s favor.<sup>50</sup> In 2000, a CCM militia and officials went on a “house-to-house rampage” after the election, forcing 2,000 Zanzibaris to flee to Kenya.<sup>51</sup> Thus, rather than being the anomaly in

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<sup>41</sup> *ZEC nullifies Zanzibar polls, cites irregularities*, THE CITIZEN (Oct. 28, 2015), <http://www.thecitizen.co.tz/tanzaniadecides/ZEC-nullifies-Zanzibar-polls--cites-irregularities/-/2926962/2933480/-/4bofkez/-/index.html>.

<sup>42</sup> David W. Throup, *The Political Crisis in Zanzibar*, CSIS (Mar. 18, 2016), <https://www.csis.org/analysis/political-crisis-zanzibar>.

<sup>43</sup> AFRICAN UNION COMMISSION, AFRICAN UNION TECHNICAL ELECTION OBSERVATION MISSION TO THE 20 MARCH 2016 RE-RUN ELECTIONS IN ZANZIBAR, TANZANIA 2, para 4 (2016), [https://au.int/sites/default/files/documents/31398-doc-final\\_report\\_aueom\\_technical\\_to\\_the\\_20\\_march\\_2016\\_zanzibar.pdf](https://au.int/sites/default/files/documents/31398-doc-final_report_aueom_technical_to_the_20_march_2016_zanzibar.pdf).

<sup>44</sup> Throup, *supra* note 42.

<sup>45</sup> AFRICAN UNION COMMISSION, *supra* note 43, at 2, para 2.

<sup>46</sup> Fumbuka Ng'wanakilala, *Tanzanian ruling party declared winner in Zanzibar re-run vote*, REUTERS (Mar. 21, 2016), <https://www.reuters.com/article/us-tanzania-election/tanzanian-ruling-party-declared-winner-in-zanzibar-re-run-vote-idUSKCN0WN0UQ>.

<sup>47</sup> *Id.*

<sup>48</sup> PALLOTTI, *supra* note 6, at 546

<sup>49</sup> AFRICAN UNION COMMISSION, *supra* note 43.

<sup>50</sup> Throup, *supra* note 42.

<sup>51</sup> *Id.*

Zanzibar, as a report from the Center for Strategic and International Studies (CSIS) noted, the cancellation and re-vote in 2015 in Zanzibar “suggests that nothing has changed” since the first multi-party elections on the island in 1995.<sup>52</sup>

### C. Undemocratic Measures

“CCM’s dominance was long viewed as ‘soft’, not ‘hard’ or openly authoritarian,”<sup>53</sup> at least on Tanzania’s mainland. However, the 2015 elections proved a turning point in the country’s political trajectory. One question that remained since Tanzania’s political liberalization in 1992 was how CCM would respond to a real threat to its rule, as two scholars wrote in 2009: “[I]t is an open question how the party [CCM] will react if a nationally competitive opposition party should manage to emerge.”<sup>54</sup>

This question has been answered in the five years since John Magufuli has been in office, and it does not bode well for the rule of law in Tanzania nor for Tanzania’s democratic development. Indeed, Magufuli’s five years as president have likely brought “an end to that era in which CCM relied on party machinery and state largesse more than suppression to preserve its rule.”<sup>55</sup>

Instead of winning elections and maintaining power through even-handed means, the government has turned to blatantly authoritarian measures. These tactics include ending the televising of parliamentary debates,<sup>56</sup> the Cybercrimes Act<sup>57</sup> passed shortly before the election in 2015 and the 2018 Electronic and Postal Communications Regulations<sup>58</sup> which have been used to go after opponents of the government or those “insulting” the president. Also enacted were the Statistics Act, which bans the publication of non-governmental statistics, the Media Services Act passed in November 2016 which empowers the state to control the accreditation of journalists and restrict the foreign ownership of newspapers, and, most worryingly for the opposition, a blanket ban on political rallies declared by Magufuli in 2016,<sup>59</sup> ironically while speaking at a rally himself. Furthermore, recognizing that the unprecedented coalition formed by the opposition through Ukawa in 2015 posed a serious threat to the ruling party, in 2019 Magufuli took advantage of CCM’s parliamentary supermajority to pass an amendment to the Political Parties Act which severely limits the ability of the opposition to form coalitions, banning

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<sup>52</sup> *Id.*

<sup>53</sup> PAGET, *supra* note 3, at 6.

<sup>54</sup> HOFFMAN & ROBINSON, *supra* note 10, at 135

<sup>55</sup> PAGET, *supra* note 3, at 5.

<sup>56</sup> Murithi Mutiga, *Tanzania cuts live parliamentary coverage, ending vital news source for citizens*, COMM. TO PROJECT JOURNALISTS (May 13, 2016), <https://cpj.org/2016/05/tanzania-cuts-live-parliamentary-coverage-ending-v/>.

<sup>57</sup> PAGET, *supra* note 3, at 6.

<sup>58</sup> FREEDOM HOUSE, FREEDOM IN THE WORLD 2020: TANZANIA (2020), <https://freedomhouse.org/country/tanzania/freedom-world/2020>.

<sup>59</sup> *Tanzania: Opposition politicians arrested as crackdown escalates ahead of elections*, AMNESTY (Jun. 24, 2020), <https://www.amnesty.org/en/latest/news/2020/06/tanzania-opposition-politicians-arrested-as-crackdown/>.

“activism” by political parties.<sup>60</sup> The government has also used the judiciary and the Director of Public Prosecution, respectively to convict opposition politicians with a wide range of crimes.<sup>61</sup>

The Cybercrimes Act<sup>62</sup> was hastily passed by an insecure Kikwete administration before the 2015 presidential elections.<sup>63</sup> The law ostensibly is intended to combat, as the name suggests, cybercrimes such as the illegal access of information, child pornography, cyber bullying, and other unkindly acts in cyberspace.<sup>64</sup> However, the law also criminalizes the publication of information that the government deems to be “misleading, deceptive or false,” carrying up to six months imprisonment for those found guilty.<sup>65</sup> Many observers, however, took a wait-and-see approach to how the law would be applied in practice.<sup>66</sup>

It did not take long for the Cybercrimes Act to be abused by the government. The day after the 2015 elections, police raided numerous Chadema vote-tallying centers<sup>67</sup> on allegations that the party had published “false” information regarding vote tallies – an offense covered by Section 16 of the Cybercrimes Act.<sup>68</sup> Eight were charged for publishing false information.<sup>69</sup> The government has also gone after internet users, including Isaac Habakuk Emily, who was charged on April 15, 2016 for insulting President Magufuli on Facebook.<sup>70</sup> Jamii Forums, founded by Maxence Melo in 2003 as a site for whistleblowing against corruption that has since become one of the country’s most popular sites for news and online discussions, has also found itself harassed by the government over the Cybercrimes Act.<sup>71</sup> Some observers even took to calling the 2015 law the “Jamii Forums Law,” as the site appeared to be one of the primary targets of the hastily passed legislation.<sup>72</sup> When Melo refused to hand over the information of certain users of

<sup>60</sup> FREEDOM HOUSE, *supra* note 58.

<sup>61</sup> *Six Tanzanian opposition leaders charged with sedition*, REUTERS (Mar. 28, 2018), <https://www.reuters.com/article/us-tanzania-politics/six-tanzanian-opposition-leaders-charged-with-sedition-idUSKBN1H4286>.

<sup>62</sup> The Cybercrimes Act (2015) No. 14, <http://www.parliament.go.tz/polis/uploads/bills/acts/1452061463-ActNo-14-2015-Book-11-20.pdf>.

<sup>63</sup> CIPESA, STATE OF INTERNET FREEDOM IN TANZANIA 2016 6 (2016), [http://cipesa.org/?wpfb\\_dl=229](http://cipesa.org/?wpfb_dl=229).

<sup>64</sup> Hanibal Goitom, *Tanzania: Cybercrimes Bill Enacted*, LIB. OF CONG. LAW, <https://www.loc.gov/law/foreign-news/article/tanzania-cybercrimes-bill-enacted/>.

<sup>65</sup> Editorial Board, *Tanzania’s troubling moves against freedom*, WASH. POST (May 16, 2015), [https://www.washingtonpost.com/opinions/tanzanias-troubling-moves-against-freedom/2015/05/16/22b6eee0-fa7b-11e4-9030-b4732caefe81\\_story.html](https://www.washingtonpost.com/opinions/tanzanias-troubling-moves-against-freedom/2015/05/16/22b6eee0-fa7b-11e4-9030-b4732caefe81_story.html).

<sup>66</sup> Justin Lynch, *Fears Over Tanzania’s Cybercrime Law Become Reality During Presidential Election*, SLATE (Oct 29, 2015), <https://slate.com/technology/2015/10/tanzania-s-terrible-cybercrimes-act-used-to-arrest-opposition-leaders.html>.

<sup>67</sup> Collord, *supra* note 22.

<sup>68</sup> The Cybercrimes Act (2015), No. 14 § 16, <http://www.parliament.go.tz/polis/uploads/bills/acts/1452061463-ActNo-14-2015-Book-11-20.pdf>.

<sup>69</sup> *Chadema volunteers charged with publishing wrong results*, THE CITIZEN (Oct. 29, 2015), <https://www.thecitizen.co.tz/tanzaniadecides/Chadema-volunteers-charged-with-publishing-wrong-results/-/2926962/2933186/-/6kxx4e/-/index.html>.

<sup>70</sup> Ndesanjo Macha, *Tanzania’s Cybercrime Act Makes It Dangerous to “Insult” the President on Facebook*, GLOBAL VOICES (Apr. 18, 2016), <https://advox.globalvoices.org/2016/04/18/tanzanias-cybercrime-act-makes-it-dangerous-to-insult-the-president-on-facebook/>.

<sup>71</sup> *Tanzania’s Jamii Founder Wins International Press Freedom Award*, AllAfrica, last visited Sep. 7, 2020, <https://allafrica.com/view/group/main/main/id/00068937.html>.

<sup>72</sup> *Id.*; Basillioh Mutahi, *Maxence Melo’s Jamii Forums: Tanzania’s ‘accidental journalist’*, BBC (Jan. 12, 2020),

Jamii Forums, and its challenges to the oppressive law failed in Tanzanian courts, Melo himself was charged under the Cybercrimes Act.<sup>73</sup>

The Statistics Act<sup>74</sup> was also passed in 2015 in preparation for the 2015 elections and criminalized the publication of “false official statistics” and the dissemination of information that would result in the “distortion of facts,”<sup>75</sup> raising concerns that it could be used to punish those publishing information unfavorable to the government. A 2018 amendment to the Statistics Act took matters even further, making it a crime to publish or gather statistics which contradict those of the official National Bureau of Statistics (“NBS”). The amendments also banned the publication of any opinion poll or other survey without the permission of the NBS.<sup>76</sup> This step was too far even for Magufuli’s government, however. Pressure from international lenders such as the World Bank – which unleashed uncharacteristically harsh criticism of the 2018 amendment<sup>77</sup> – forced them to repeal the unofficial statistics ban less than a year later, in July 2019.<sup>78</sup>

In March 2018, the government passed the Electronic and Postal Communications Regulations,<sup>79</sup> which forced blogs, online forums, video streaming sites, and other websites to register with the government, “a process that requires them to pay large entry fees and comply with draconian regulations.”<sup>80</sup> These fees could be up to \$900,<sup>81</sup> a sum nearly equal to the country’s GDP per capita.<sup>82</sup> The regulations also allow the government to force the “unmasking” of anonymous users on online forums. The new regulations led Jamii Forums to temporarily suspend access to its website for twenty-one days.<sup>83</sup>

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<https://www.bbc.com/news/world-africa-50973409>.

<sup>73</sup> *Tanzanian police charge Jamii Forums founder*, BBC (Dec. 16, 2016), <https://www.bbc.com/news/world-africa-38341151>.

<sup>74</sup> The Statistics Act (2015), No. 9, <http://parliament.go.tz/polis/uploads/bills/acts/1452062087-ActNo-9-2015-Book-1-10.pdf>.

<sup>75</sup> Oryem Nyeko, *Tanzania Drops Threat of Prison Over Publishing Independent Statistics*, HUMAN RIGHTS WATCH (Jul. 3, 2019), <https://www.hrw.org/news/2019/07/03/tanzania-drops-threat-prison-over-publishing-independent-statistics>.

<sup>76</sup> It is no longer a crime to publish statistics in Tanzania, *The Citizen* (Jun. 28, 2019), <https://www.thecitizen.co.tz/news/It-is-no-longer-a-crime-to-publish-statistics-in-Tanzania-/1840340-5174870-wjjdxhz/index.html>

<sup>77</sup> Press Release, World Bank, *World Bank Statement on Amendments to Tanzania’s 2015 Statistics Act* (Oct. 2, 2018), <https://www.worldbank.org/en/news/statement/2018/10/02/world-bank-statement-on-amendments-to-tanzanias-2015-statistics-act>.

<sup>78</sup> Fred Oluoch, *Tanzania bows to pressure to amend law on statistics*, *THE EAST AFRICAN* (Jul. 6, 2019), <https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-bows-to-pressure-to-amend-law-on-statistics-1421884>.

<sup>79</sup> Electronic and Postal Communications (Online Content) Regulations (2018), Gov. Notice No. 133, <https://crm.misa.org/upload/web/supp-gn-no-133-16-03-2018-epoca-online-content-regulations-2018.pdf>.

<sup>80</sup> *Tanzania forces forums, blogs, and streaming websites to comply with draconian regulations*, CMTE TO PROTECT JOURNALISTS, (Jun. 12, 2018), <https://cpj.org/2018/06/tanzania-forces-forums-blogs-and-streaming-website/>.

<sup>81</sup> Fumbuka Ng’wanakilala, *Tanzania orders all unregistered bloggers to take down their sites*, Reuters (Jun. 11, 2018), <https://af.reuters.com/article/tanzaniaNews/idAFL8N1TD3FW>.

<sup>82</sup> *GDP per capita (current US\$) – Tanzania*, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TZ>, last visited Sep. 8, 2020.

<sup>83</sup> Ng’wanakilala, *supra* note 81; Mutahi, *supra* note 72.

In August 2020, the government enacted what has been dubbed the “Electronic and Postal Communications amendment,” banning the dissemination of foreign media reporting without government permission.<sup>84</sup> The regulations also ban the publication of information regarding the coronavirus pandemic without government approval.<sup>85</sup> The month before, in July 2020, social media posts deemed to tarnish Tanzania’s reputation were also banned, adding to a growing list of punitive restrictions on internet freedoms and freedom of speech in Tanzania.<sup>86</sup>

The Media Services Act,<sup>87</sup> passed in 2016, also serves to limit access to information and clamp down on critical media. The Act established the position of Director of Information Services, to be appointed by the president of Tanzania and empowered with journalist accreditation and licensing print media.<sup>88</sup> The law also carries punishments of three to five years in prison for publishing information which threatens “(i) the interests of defense, public safety, public order, the economic interests of the United Republic, public morality or public health; or (ii) is injurious to the reputation, rights and freedom of other persons.”<sup>89</sup> On June 23, 2020, the government revoked the license of Tanzania Daima Daily, a newspaper owned by Chadema chairman Freeman Mbowe, citing ethical violations under the 2016 Media Services Act.<sup>90</sup>

President Magufuli has also taken to issuing threats to news outlets. In 2017, he declared “I would like to tell media owners - be careful, watch it. If you think you have that kind of freedom, (it is) not to that extent.”<sup>91</sup> Multiple other newspapers have been banned during Magufuli’s term, including *Mawio*, *Mwanahalisi*, and *Raia Mwema* in 2017.<sup>92</sup> *Mwanahalisi* found itself banned for two years for “unethical reporting” and “endangering national security” when it published an article calling for prayers for lawyer and Chadema politician Tundu Lissu who was suffering from life-threatening injuries following an assassination attempt.<sup>93</sup> In March 2019, *The Citizen* was banned for seven days for alleged “bias” in its reporting.<sup>94</sup> The English-language outlet had

<sup>84</sup> *Magufuli bans Tanzania's media outlets from broadcasting foreign content*, BULAWAYO24 (Aug. 10, 2020), <https://bulawayo24.com/index-id-news-sc-national-byo-190238.html>.

<sup>85</sup> *Tanzania bars media from using foreign content*, INT. PRESS INST. (Aug. 12, 2020), <https://ipi.media/tanzania-bars-media-from-using-foreign-content/>

<sup>86</sup> *Id.*

<sup>87</sup> Media Services Act (2016), No. 12.

<sup>88</sup> Constance Johnson, *Tanzania: New Law on Media Services*, LIB. OF CONG. LAW (Nov 15, 2016), <https://www.loc.gov/law/foreign-news/article/tanzania-new-law-on-media-services/>.

<sup>89</sup> Media Services Act (2016), No. 12 § 50, <https://www.parliament.go.tz/polis/uploads/bills/1474021216-A%20BILL%20-%20%20%20THE%20MEDIA%20SERVICES%20ACT,%202016.pdf>.

<sup>90</sup> *Government revokes 'Tanzania Daima' newspaper license*, THE CITIZEN (Jun. 23, 2020), <https://www.thecitizen.co.tz/news/Government-revokes--Tanzania-Daima--newspaper-license/1840340-5581552-fjs6c8z/index.html>.

<sup>91</sup> *Tanzania's president warns journalists that press freedom has limits*, REUTERS (Mar. 24, 2017), <https://www.reuters.com/article/us-tanzania-media/tanzanias-president-warns-journalists-that-press-freedom-has-limits-idUSKBN16V25S>.

<sup>92</sup> The Citizen, *Tanzanian govt bans Tanzania Daima newspaper*, NATION [Kenya] (Oct. 25, 2017), <https://nation.africa/news/africa/Tanzanian-govt-bans-tabloid/1066-4154656-nxw4gs/index.html>.

<sup>93</sup> Article 19, *Tanzania: Newspaper Mwanahalisi banned for sedition*, REF WORLD (Sep. 22, 2017), <https://www.refworld.org/docid/59ca69474.html>.

<sup>94</sup> *Tanzania imposes 7-day publication ban on The Citizen*, COMM. TO PROTECT JOURNALISTS (Mar. 1, 2019), <https://cpj.org/2019/03/tanzania-citizen-7-day-publication-ban/>.

published comments from US Senator Bob Menendez<sup>95</sup> criticizing the Tanzanian government for its democratic backsliding, as well as another piece about the Tanzanian currency falling against the US dollar, both of which were charged by the government with being false and misleading.<sup>96</sup> The next year, in April 2020, *The Citizen's* Swahili-language sister paper was banned from publishing online for six months and fined 5 million Tanzanian shillings (\$2,173) for allegedly publishing “false and misleading” content.<sup>97</sup> The website remains inaccessible in August 2020.<sup>98</sup>

In July 2020, online television outlet Kwanza TV was handed an 11-month sentence by the Tanzania Communication Regulatory Authority (TCRA)<sup>99</sup> for the offense of posting a notice from the U.S. Embassy pertaining to the risks of COVID-19 in Tanzania on the broadcaster’s Instagram account.<sup>100</sup> The regulator claimed that the Instagram post – which was a re-post of the U.S. Embassy’s statement – contained misleading and false information about the state of the coronavirus pandemic in the country. While the broadcaster has appealed the decision, its website and social media accounts have not been updated since the suspension.<sup>101</sup> The previous year, in September 2019, the online broadcaster was handed a six-month suspension, also for the offense of publishing misleading information.<sup>102</sup>

In August 2020, TCRA also suspended Clouds Television as well as Clouds FM from broadcasting for seven days. The suspension is due to the announcement of election statistics without the approval of the National Electoral Commission (NEC).<sup>103</sup> The media network was requested to make a public apology for violating the rules.

In addition to media outlets, journalists themselves have also faced arrest and even violent attacks. In July 2019, Erick Kabendera, a prominent investigative journalist, was arrested by the police that questioned him about his citizenship. The arrest came after Kabendera, a David Astor award winner, published articles about an alleged scheme to prevent Magufuli from running for a

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<sup>95</sup> Syriacus Buguzi, *Tanzania: US Senator Demands Trump Action on Tanzania Situation*, ALL AFRICA (Jul. 23, 2018), <https://allafrica.com/stories/201807230500.html>.

<sup>96</sup> Tanzania Daily News, *Tanzania: Govt Clarifies Decision to Suspend 'The Citizen' for Seven Days*, ALL AFRICA (Mar. 3, 2019), <https://allafrica.com/stories/201903040131.html>.

<sup>97</sup> *Tanzanian newspaper banned from publishing online for 6 months over COVID-19 report*, COMM. TO PROTECT JOURNALISTS (May 11, 2020), <https://cpj.org/2020/05/tanzanian-newspaper-banned-from-publishing-online/>.

<sup>98</sup> See MWANANCHI, <http://host.nationmedia.com/mcltz/>, last visited Sep. 8, 2020, Error message appears noting that the website is not available.

<sup>99</sup> *Tanzania suspends another media outlet over its Covid-19 coverage*, REPORTERS WITHOUT BORDERS (Jul. 10, 2020), <https://rsf.org/en/news/tanzania-suspends-another-media-outlet-over-its-covid-19-coverage>.

<sup>100</sup> *Tanzania bans Kwanza Online TV for 11 months citing 'misleading' Instagram post on COVID-19*, COMM. TO PROJECT JOURNALISTS (Jul. 9, 2020), <https://cpj.org/2020/07/tanzania-bans-kwanza-online-tv-for-11-months-citing-misleading-instagram-post-on-covid-19/>.

<sup>101</sup> Jacob Mosenda, *Kwanza Online TV to appeal the 11-month suspension*, THE CITIZEN (Jul. 10, 2020), <https://www.thecitizen.co.tz/news/Kwanza-Online-TV-to-appeal-the-11-month-suspension/1840340-5591242-ptkxxdz/index.html>.

<sup>102</sup> *Tanzanian authorities ban online TV station, fine 2 others*, COMM TO PROTECT JOURNALISTS (Jan. 8, 2020), <https://cpj.org/2020/01/tanzanian-authorities-ban-online-tv-station-fine-2/>.

<sup>103</sup> Christina Mseja, *Tanzania: TCRA Suspends Clouds TV Programmes for 7-Days*, ALL AFRICA (Aug 27, 2020), <https://allafrica.com/stories/202008280342.html>.



second term.<sup>104</sup> The police later on charged him with money laundering and tax evasion, charges that do not qualify for bail.<sup>105</sup> The story of Kabendera is one of many. Azory Gwanda went missing in November 2017 while investigating mysterious killings in rural Tanzania.<sup>106</sup> His condition and whereabouts were unknown until Foreign Minister Palamagamba Kabudi referenced – “almost in passing” – that Gwanda was dead, blaming “extremists” in a July 2019 interview with the BBC.<sup>107</sup> The next day, however, Kabudi denied saying that Gwanda was dead and has since maintained the government is not aware of his whereabouts and whether he is dead or alive.<sup>108</sup> Joseph Gandye was detained in August 2019 after reporting police brutality, which was denied by the police claiming the report was a sedition aiming at shaming the police and slandering the government.<sup>109</sup>

In 2016, Magufuli placed a blanket ban on all forms of political rally and protest.<sup>110</sup> The move came in response to rallies organized by the opposition protesting Magufuli’s “undemocratic measures” that were forcefully broken up by police using tear gas.<sup>111</sup> Zitto Kabwe of the ACT Wazalendo party – which formed part of the Ukawa coalition in the 2015 elections – remarked that “When we air our views in parliament we are thrown out. Outside parliament, our rallies are banned.” The ban on rallies was amended a month later to exempt sitting MPs holding rallies in their own districts.<sup>112</sup> But given that CCM enjoys a large majority in parliament, this change only served to further marginalize the opposition.

Making matters worse, Magufuli defended the ban on political gathering *while at a political rally*, and it has not been applied even-handedly, with police permitting CCM members to hold rallies on some occasions.<sup>113</sup> Magufuli, for his part, has taken to holding “non-political” public events, distinguished from political rallies merely by the presence of civil servants.<sup>114</sup>

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<sup>104</sup> Ruth Maclean, *Arrest of Tanzanian journalist heightens fears over press safety*, THE GUARDIAN [U.K.] (Jul. 30, 2019), <https://www.theguardian.com/world/2019/jul/30/arrest-of-tanzanian-journalist-sparks-fears-over-press-safety>.

<sup>105</sup> Abdi Latif Dahir, *The case against an investigative journalist shows Tanzania’s Magufuli widening a media crackdown*, QUARTZ AFRICA (Sep. 19, 2019), <https://qz.com/africa/1710510/tanzania-journalist-erick-kabendera-arrest-as-magufuli-eyes-media/>.

<sup>106</sup> *#WhereIsAzory?*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/whereisazory/>, last accessed Sep. 8, 2020.

<sup>107</sup> *In BBC interview, Tanzanian foreign minister says journalist Azory Gwanda is dead*, COMM. TO PROJECT JOURNALISTS (Jul. 10, 2019), <https://cpj.org/2019/07/in-bbc-interview-tanzanian-foreign-minister-says-j/>.

<sup>108</sup> Fumbuka Ng’wanakilala, *Tanzania says does not know whether missing journalist is dead or alive*, REUTERS (Jul. 11, 2019), <https://www.reuters.com/article/us-tanzania-media-idUSKCN1U61NO>.

<sup>109</sup> THRDC, Press Release, Public Statement on the Arrest of Watetezi TV Investigative Journalist, Joseph Gandye, Aug. 22, 2019, <https://thrdc.or.tz/public-statement-on-the-arrest-of-watetezi-tv-investigative-journalist-joseph-gandye/>.

<sup>110</sup> Fumbuka Ng’wanakilala, *Tanzania police uses teargas at opposition rally, bans protests*, REUTERS (Jun. 7, 2016), <https://www.reuters.com/article/us-tanzania-politics/tanzania-police-uses-teargas-at-opposition-rally-bans-protests-idUSKCN0YT2G7>.

<sup>111</sup> *Id.*

<sup>112</sup> *Magufuli relaxes political rally ban, warns Chadema*, THE CITIZEN (Jul. 30, 2016), <https://www.thecitizen.co.tz/news/Magufuli-relaxes-political-rally-ban--warns-Chadema/1840340-3322762-yridp5/index.html>.

<sup>113</sup> PAGET *supra* note 3, at 8.

<sup>114</sup> *Tanzania’s Rogue President*, THE ECONOMIST, (Mar. 18, 2018), <https://www.economist.com/middle-east-and-africa/2018/03/15/tanzanias-rogue-president>.

Tanzania has Africa's best attended political rallies, and Tanzania ranks among the top countries in the world in the attendance and importance of rallies in political life.<sup>115</sup> As a result, notes Tanzania expert Dan Paget, “[i]t might not seem obvious why a ban on rallies is such a severe infringement on political freedom, but in fact, there is no country on the continent in which such a ban would be more politically repressive than in Tanzania.” In addition, as cited above, Chadema has used political rallies as a tool to expand its reach and support base to new areas of the country. The ban on political gatherings serves to stymie such efforts to garner support for opposition parties.<sup>116</sup> The ban on political gatherings has led to the arrest of numerous opposition politicians, including Zitto Kabwe of ACT-Wazalendo.<sup>117</sup>

In February 2019, Magufuli signed into law an amendment to the Political Parties Act to place severe restrictions on the ability to form coalitions in the run-up to elections.<sup>118</sup> Perhaps recognizing that a unified opposition – like the coalition that contested the 2015 elections – could pose a serious threat to CCM rule, the amendments include “a provision empowering a government minister to regulate party coalition formation, a ban on political fundraising from international sources, a rule prohibiting political parties from engaging in ‘activism,’ and the introduction of a number of tools that the registrar can use to investigate and interfere with the internal operations of targeted parties.”<sup>119</sup> Tundu Lissu, Chadema's candidate for president, has expressed concern that the National Election Commission (“NEC”) may use the 2019 law as a pretext to disqualify opposition candidates.<sup>120</sup>

The human rights situation in Tanzania has led to international condemnation. In November 2018, the European Union recalled its ambassador, Roeland van der Geer from the country.<sup>121</sup> The next month, December 2018, the European Parliament passed a unanimous resolution condemning the deteriorating political and human rights situation and the lack of rule of law in Tanzania.<sup>122</sup>

#### D. Attacks Against Opposition Leaders and Critics

On September 7, 2017, Tundu Lissu, at the time a Chadema parliamentarian, lawyer, and President of the Tanganyika Law Society<sup>123</sup> was shot sixteen times in an assassination attempt in

<sup>115</sup> DAN PAGET, *The Rally Intensive Campaign: A Distinct Form of Electioneering in Sub-Saharan Africa*, 24:4 INT. JOURN. OF PRESS/POLITICS 444, 455 (2019), <https://journals.sagepub.com/doi/10.1177/1940161219847952>.

<sup>116</sup> PAGET *supra* note 3, at 8.

<sup>117</sup> *Tanzanian opposition leader arrested as election approaches*, ASSOC. PRESS (Jun. 23, 2020) <https://apnews.com/fc096481df0f222d0228dca84f127c10>.

<sup>118</sup> FREEDOM HOUSE, *supra* note 58.

<sup>119</sup> *Id.*

<sup>120</sup> *Chadema and ACT face tricky decision on joint Presidential candidate for 2020 polls*, THE CITIZEN (Aug. 15, 2020), <https://www.thecitizen.co.tz/news/Chadema--ACT-face-tricky-decision-on-single-candidate/1840340-5609378-tv4hvqz/index.html>.

<sup>121</sup> Khalifa Said, *EU parliament issues unanimous resolution against Tanzania over human rights issues*, THE CITIZEN (Dec. 14, 2018), <https://www.thecitizen.co.tz/news/EU-parliament-issues-unanimous-resolution-against-Tanzania/1840340-4895700-vabx23z/index.html>.

<sup>122</sup> *Id.*

<sup>123</sup> *Lissu wins TLS presidency*, THE CITIZEN (Mar. 18, 2017), <https://www.thecitizen.co.tz/News/Lissu-wins-TLP-presidency/1840340-3854644-format-xhtml-9yr2x7/index.html>.

a car outside his residence in Dodoma, Tanzania’s administrative capital.<sup>124</sup> Lissu was taken first to a hospital in Nairobi, Kenya for treatment,<sup>125</sup> before briefly entering into exile in Belgium, where he continued to recover from his life threatening injuries.<sup>126</sup> In 2019, Lissu was stripped of his parliamentary seat on absenteeism grounds as he recovered from the attack on his life.<sup>127</sup> A by-election for Lissu’s seat was won by a CCM candidate, who ran unopposed.<sup>128</sup> The attackers have never been identified, and Lissu has accused the government of being behind the attack, noting that he resided in state-provided housing in the capital alongside numerous other politicians with twenty-four hour security, but the police were “nowhere to be seen” when the attack took place. In addition, the government failed to cover his medical bills in Nairobi despite an obligation to do so, given Lissu’s status as an MP. Lissu also charged that police failed to interview him or his driver, both of whom were witnesses and victims of the attack.<sup>129</sup> President Magufuli took to Twitter at the time to express his “shock” at the heinous assassination attempt,<sup>130</sup> but no perpetrator has yet been identified. Notably, president Magufuli has not made any public comment on the heinous attack beyond his expression of surprise on Twitter.

The Inter-Parliamentary Union (“IPU”), a global association of national parliaments, launched an investigation of its own in February 2020<sup>131</sup> and has called on the government to ensure Lissu’s safety after his return to Tanzania in July, citing a worrying rise in death threats against Lissu since he announced his intention to return to the country.<sup>132</sup>

In the year leading up to the attempt on Tundu Lissu’s life, he was arrested eight times on various politically-motivated charges, including on charges of incitement.<sup>133</sup> Lissu still faces four charges of sedition for “uttering words with intent to wound religious feelings and raising

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<sup>124</sup> *Tanzania: Opposition MP Tundu Lissu wounded by gunmen*, AL JAZEERA (Sep. 7, 2017), <https://www.aljazeera.com/news/2017/09/tanzania-opposition-mp-tundu-lissu-wounded-gunmen-170907131959935.html>.

<sup>125</sup> *Tanzania’s Tundu Lissu recovering after gun attack*, AL JAZEERA (Sep. 8, 2017), <https://www.aljazeera.com/news/2017/09/tanzania-tundu-lissu-recovering-gun-attack-170908185550801.html>.

<sup>126</sup> Will Brown, *Tanzanian strongman’s top opponent returns home after being shot 16 times*, THE TELEGRAPH (Jul. 27, 2020), <https://www.telegraph.co.uk/news/2020/07/27/tanzanian-strongmans-top-opponent-returns-home-shot-16-times/>.

<sup>127</sup> *Tanzania opposition leader Tundu Lissu stripped of parliamentary post*, AFRICA NEWS (Jun. 29, 2019), <https://www.africanews.com/2019/06/29/tanzania-opposition-leader-tundu-lissu-stripped-of-parliamentary-post/>.

<sup>128</sup> *Tanzania replaces expelled opposition MP Tundu Lissu*, AFRICA NEWS (Sep. 4, 2019), <https://www.africanews.com/2019/09/04/tanzania-replaces-expelled-opposition-mp-tundu-lissu/>.

<sup>129</sup> Sammy Wambua, *Opposition Chief Whip Tundu Lissu blames attempt on his life on Tanzania Government*, THE STANDARD [Kenya] (Jan. 5, 2018), <https://www.standardmedia.co.ke/africa/article/2001265035/magufuli-government-behind-my-shooting-says-opposition-politician-tundu-lissu>.

<sup>130</sup> The Citizen, *Tanzania: Magufuli Shocked By Lissu Shooting* (Sep. 7, 2017), <https://allafrica.com/stories/201709080004.html>

<sup>131</sup> *International Parliamentary Union opens enquiry into Lissu case assassination attempt*, THE CITIZEN (Feb. 6, 2020), <https://www.thecitizen.co.tz/news/1840340-5446142-adv960/index.html>.

<sup>132</sup> Press Release, Inter-Parliamentary Union, IPU Human Rights Committee urges Tanzanian authorities to ensure safety of returning opposition leader Tundu Lissu, Jul. 24, 2020, <https://www.ipu.org/news/statements/2020-07/ipu-human-rights-committee-urges-tanzanian-authorities-ensure-safety-returning-opposition-leader-tundu-lissu>

<sup>133</sup> *Tanzania opposition figure Tundu Lissu returns from exile*, AL JAZEERA (Jul. 27, 2020), <https://www.aljazeera.com/news/2020/07/tanzania-opposition-figure-tundu-lissu-returns-exile-200727134418474.html>.

discontent and ill-will for unlawful purposes,”<sup>134</sup> which he has dismissed as politically motivated.<sup>135</sup>

In August 2017, weeks before Tundu Lissu was attacked by armed men in Dodoma, the offices of IMMMA Advocates, where Tundu Lissu’s counsel, Fatma Karume is a partner, was bombed.<sup>136</sup> The bomb shattered windows and blasted an entrance open,<sup>137</sup> but IMMMA Advocates said that nothing had been stolen from the office after the blast.<sup>138</sup> Karume is the granddaughter of Zanzibar’s first post-independence president and a very prominent human rights lawyer.<sup>139</sup> Following the attack on Tundu Lissu, Karume was elected to replace him as the head of TLS.<sup>140</sup> In 2019, Karume was suspended from practicing law “in response to allegations of misconduct following her written submissions in a constitutional challenge to the President’s appointment of Professor Adelardus Kilangi as the Attorney General of Tanzania.”<sup>141</sup> The move was condemned by TLS and the International Bar Association.<sup>142</sup>

In total, nine Chadema members have faced charges of sedition, incitement to violence, and for holding an “illegal rally” in February 2018.<sup>143</sup> The latter charge led to the imprisonment of Chadema head Freeman Mbowe and Chadema MP Esther Matiko for four months.<sup>144</sup> The February 2018 rally was held to protest the disqualification of opposition candidates. Police opened fire at the rally with a stray bullet killing a 21-year old student travelling on a bus home from her college.<sup>145</sup> In March 2020, a court convicted all nine Chadema members of their

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<sup>134</sup> The Citizen, *Tanzania's Tundu Lissu in court three days after return*, THE EAST AFRICAN (Jul. 31, 2020), <https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-s-tundu-lissu-in-court-three-days-after-exile-return-1910472>; Tanzania Daily News, *Lissu Skips Court Date Due to Polls Procedure*, MARKET WATCH (Aug. 27, 2020), [https://www.marketwatch.com/press-release/lissu-skips-court-date-due-to-polls-procedure-2020-08-27?mod=mw\\_more\\_headlines&tesla=y](https://www.marketwatch.com/press-release/lissu-skips-court-date-due-to-polls-procedure-2020-08-27?mod=mw_more_headlines&tesla=y).

<sup>135</sup> *Tanzania's Tundu Lissu: 'I'm returning home'*, DEUTSCHE WELLE (Jul. 10, 2020), <https://p.dw.com/p/3f5UQ>.

<sup>136</sup> “*As Long as I am Quiet, I am Safe*”: *Threats to Independent Media and Civil Society in Tanzania*, HUMAN RIGHTS WATCH (Oct. 28, 2019), <https://www.hrw.org/fr/node/334878>.

<sup>137</sup> *Id.*

<sup>138</sup> *Dark cloud hangs on law firm attack*, THE CITIZEN (Aug. 27, 2017), <https://www.thecitizen.co.tz/news/Dark-cloud-hangs-on-law-firm-attack/1840340-4072654-bk1et8/index.html>.

<sup>139</sup> *Tanzania’s leader, the “Bulldozer”, runs off course*, THE ECONOMIST (Mar. 14, 2019), <https://www.economist.com/middle-east-and-africa/2019/03/14/tanzanias-leader-the-bulldozer-runs-off-course>.

<sup>140</sup> *Fatma Karume elected new TLS President*, THE CITIZEN (Apr. 14, 2018), <https://www.thecitizen.co.tz/news/Fatma-Karume-elected-new-TLS-President/1840340-4393824-26c294/index.html>.

<sup>141</sup> Press Release, Int. Bar Assoc., et al., *Joint Statement: Arbitrary Suspension of Tanzanian Lawyer and Former President of the Tanganyika Law Society, Ms Fatma Karume*, Mar. 16, 2020, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=2466c93b-bf6c-4b01-af34-d4dd5f05026b>.

<sup>142</sup> *Id.*; Carmel Rickard, *Tanzanian Lawyers in Uproar After Judge Suspends Their Immediate Past President From Practice*, AFRICAN LII (Sep. 26, 2019), <https://africanlii.org/article/20190926/tanzanian-lawyers-uproar-after-judge-suspends-their-immediate-past-president>.

<sup>143</sup> HUMAN RIGHTS WATCH, *WORLD REPORT 2020, TANZANIA: EVENTS OF 2019* (2020), <https://www.hrw.org/world-report/2020/country-chapters/tanzania-and-zanzibar#fl1c2e>.

<sup>144</sup> Dorothy Ndal, *Tanzania opposition leader freed after nearly four months in jail*, THE EAST AFRICAN (Mar. 7, 2019), <https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-opposition-leader-freed-after-nearly-four-months-in-jail-1413808>.

<sup>145</sup> Andy Gregory, *Tanzanians raise £100,000 to support opposition politicians convicted for holding rally*, THE INDEPENDENT (Mar. 13, 2020), <https://www.independent.co.uk/news/world/africa/tanzania-opposition-politicians-convicted-magafuli-chadema-dar-es-salaam-a9398136.html>.

charges, including for making seditious statements and holding an “illegal” rally just days before a scheduled by-election.<sup>146</sup>

In February 2018, Joseph Mbilinyi “Sugu,” a Chadema MP for Mbeya Urban in the country’s southwest, was jailed for five months for allegedly delivering a “hate speech” against President Magufuli in December 2017.<sup>147</sup> Also jailed was Chadema’s party secretary for the Southern Highland Zone, Emmanuel Masonga.<sup>148</sup> Mbilinyi is commonly known as “Sugu” (meaning “stubborn” or “hard” in English<sup>149</sup>) or “MC Sugu” given his rap career before he entered politics.<sup>150</sup> Even before entering politics and as a rapper, Sugu was a fierce critic of the government.<sup>151</sup> One of his songs, known as “#219,” in which he raps about the poor state of prisons in Tanzania, was leaked to the public after he was jailed in 2018.<sup>152</sup> The National Arts Council, known by its Swahili acronym, Basata, then banned the song, claiming that the song had an “inciting message.”<sup>153</sup> Sugu announced he was suing Basata over the banning of #219.<sup>154</sup>

That same month, two Chadema officials were hacked to death with machetes. On February 22, 2018, Godfrey Luena, a Chadema counselor representing Namwawala ward in central Morogoro. Chadema officials called it a “political assassination.” Chadema’s deputy secretary said that Luena had disagreements with local government and CCM officials over land grabs.<sup>155</sup> On February 13, less than two weeks prior to Luena’s brutal assassination, Daniel John, a Chadema official in Dar es Salaam responsible for the Hananasif district was abducted by unknown men in a car and hacked to death.<sup>156</sup> He was found dead on a beach with severe machete wounds.<sup>157</sup>

On May 5, 2019, prominent Chadema activist and fierce critic of Magufuli’s government Mdude Nyagali was abducted by armed men from his office in Mbozi, in western Tanzania.<sup>158</sup>

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<sup>146</sup> Nuzulack Dausen, *Tanzanian opposition lawmakers found guilty of making seditious statements*, REUTERS (Mar. 10, 2020), <https://www.reuters.com/article/us-tanzania-politics/tanzanian-opposition-lawmakers-found-guilty-of-making-seditious-statements-idUSKBN20X2O8>

<sup>147</sup> Daniel Mumbere, *Tanzania legislator jailed for defaming President Magufuli*, AFRICA NEWS (Feb. 26, 2018), <https://www.africanews.com/2018/02/26/tanzania-legislator-jailed-for-defaming-president-magufuli/>.

<sup>148</sup> *Id.*; *Sugu and Masonga released ‘quietly’ from prison*, THE CITIZEN (May 10, 2018), <https://www.thecitizen.co.tz/news/1840340-4553896-5wv6bqz/index.html>.

<sup>149</sup> *Joseph Mbilinyi aka Sugu to be released from prison today*, THE CITIZEN (May 10, 2018), <https://www.thecitizen.co.tz/news/1840340-4553864-5wv6egz/index.html>.

<sup>150</sup> Mumbere, *supra* note 147.

<sup>151</sup> *Id.*

<sup>152</sup> *Joseph Mbilinyi takes Tanzania to court over rap song ban*, BBC (Jun. 22, 2018), <https://www.bbc.com/news/world-africa-44574840>.

<sup>153</sup> *‘Sugu’ to sue Basata over ‘leaked song’ ban*, THE CITIZEN (Jun. 20, 2018), <https://www.thecitizen.co.tz/news/1840340-4622308-5fnuqbz/index.html>

<sup>154</sup> *Id.*

<sup>155</sup> *Second opposition politician killed in Tanzania*, THE CITIZEN (Feb. 23, 2018), <https://www.theeastafrican.co.ke/tea/news/east-africa/second-opposition-politician-killed-in-tanzania--1384680>

<sup>156</sup> *Tanzanian opposition Chadema party leader beaten to death*, NATION [Kenya], (Feb. 14, 2018), <https://nation.africa/kenya/news/africa/tanzanian-opposition-chadema-party-leader-beaten-to-death-12832>.

<sup>157</sup> THE CITIZEN, *supra* note, 155.

<sup>158</sup> HUMAN RIGHTS WATCH, *supra* note 143; *Missing Tanzanian opposition activist ‘Mdude Chadema’ found alive*, THE CITIZEN (May 9, 2019), <https://www.thecitizen.co.tz/news/Missing-Tanzanian-opposition-activist--Mdude-/1840340-5107026-oonvc7/index.html>.

Four days later, Nyagali was found 150 kilometers away in a ditch, unable to speak and in critical condition.<sup>159</sup> Nyagali has accused the police of abducting and beating him, a charge denied by the authorities.<sup>160</sup> After launching a lawsuit against the authorities, police claimed to have found heroin in a search of his home, and initially launched “economic sabotage” charges against Nyagali, before dropping them<sup>161</sup> and replacing them with drug trafficking charges.<sup>162</sup> Since this is a non-bailable offense, this resulted in Nyagali’s jailing without trial.

On December 19, 2019, unknown men abducted human rights lawyer and program officer at the Legal and Human Rights Centre (“LHRC”) Tito Magoti.<sup>163</sup> Following public outcry, the authorities admitted plainclothes officers had arrested him.<sup>164</sup> Authorities later arrested Theodory Giyani, an IT expert and friend of Magoti. Both Magoti and Giyani had long been active critics of the government.<sup>165</sup> Both men were charged with three counts of leading a criminal gang, as well as money laundering charges – both of which are unbailable charges under Tanzanian law.<sup>166</sup> Both Magoti and Giyani remain behind bars, and the American Bar Association (“ABA”) wrote in a July report that, “From its onset, the case has been marred by procedural irregularities that have implicated Tanzania’s international legal obligations to promote and respect the right to a fair trial, the right to be free from arbitrary detention, and the right to freedoms of expression and association.”<sup>167</sup> The ABA further noted that both men were taken without search warrants and held “*incommunicado*” for days without access to lawyers.<sup>168</sup> Since their arrests, the case has been postponed “at least 15 times,” and they continue to languish in jail on unbailable charges despite the state failing to present any evidence against them in the nine months since their arrests.<sup>169</sup>

Other politicians have also faced attacks, including Chadema party chairman Freeman Mbowe, who in June 2020 came under attack as he returned to his home in Dodoma by unknown assailants, requiring his immediate hospitalization.<sup>170</sup> Chadema’s Secretary-General John

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<sup>159</sup> HUMAN RIGHTS WATCH.

<sup>160</sup> BBC, *Missing Tanzanian activist Mdude Nyagali 'found in bush'*, THE EAST AFRICAN (May 9, 2019), <https://www.theeastafrican.co.ke/tea/news/east-africa/missing-tanzanian-activist-mdude-nyagali-found-in-bush--1417562>.

<sup>161</sup> Tanzania Updates @TanzaniaUpdates, TWITTER (May 27, 2020, 2:27 PM), <https://twitter.com/TanzaniaUpdates/status/1265607437467504641>.

<sup>162</sup> Tanzania Updates @TanzaniaUpdates, TWITTER (May 13, 2020, 7:01 PM), <https://twitter.com/TanzaniaUpdates/status/1260601097464492032>.

<sup>163</sup> A.B.A. Center for Human Rights, *Tanzania: Preliminary Analysis of the Criminal Case Against Tito Magoti and Theodory Giyani*, A.B.A. (Jul. 28, 2020), [https://www.americanbar.org/groups/human\\_rights/reports/tanzania--preliminary-analysis-of-the-criminal-case-against-tito/](https://www.americanbar.org/groups/human_rights/reports/tanzania--preliminary-analysis-of-the-criminal-case-against-tito/).

<sup>164</sup> *Tanzania: Release human rights lawyer Tito Magoti immediately and unconditionally*, AMNESTY (Jan. 21, 2020), <https://www.amnesty.org/en/latest/news/2020/01/tanzania-release-human-rights-lawyer-tito-magoti-immediately-and-unconditionally/>.

<sup>165</sup> A.B.A. Center for Human Rights, *supra* note 163.

<sup>166</sup> Khalifa Said, *Tito Magoti faces unbailable charge*, THE CITIZEN (Dec. 25, 2019), <https://www.thecitizen.co.tz/news/1840340-5397724-9www1v1/index.html>.

<sup>167</sup> A.B.A. Center for Human Rights, *supra* note 163.

<sup>168</sup> A.B.A. Center for Human Rights, *supra* note 163.

<sup>169</sup> *Id.*

<sup>170</sup> *Tanzania opposition leader attacked months before the elections*, AL JAZEERA (Jun. 9, 2020),

Mnyika called it a “politically motivated attack,” and the US Embassy in Tanzania issued a strong statement of concern, noting that “this senseless attack on an opposition leader is only the latest in a long series of disturbing acts of violence and harassment perpetrated against members of the opposition.”<sup>171</sup> The embassy drew comparisons to the 2017 attack on Tundu Lissu.<sup>172</sup>

On August 13, 2020, Chadema’s party offices in Arusha were firebombed, and Tundu Lissu’s vehicle came under attack by what his lawyers described in a letter to the Tanzanian Police Force as “stone-throwing bandits.”<sup>173</sup>

Violence is not reserved for opposition leaders. In July 2019, Leopold Lwabaje, a high-ranking Finance Ministry official was found dead hanging from a tree after going missing for days. A spokesman from the ministry said Lwabaje had gone to the police station for questioning. His role at the Finance Ministry involved working with European Union-funded projects.<sup>174</sup> Police claimed that his death was a suicide, but Lwabaje’s family has rejected this conclusion.<sup>175</sup>

#### E. November 2019 Local Elections

On November 24, 2019, Tanzania held local elections for 333,555 local positions,<sup>176</sup> including some 16,000 street and local village leaders – important posts for grassroots campaigning.<sup>177</sup> The local elections – given they were held less than a year before scheduled national elections – should have served as an important barometer on public opinion and support for the ruling and opposition parties, given the severe restrictions on surveys and polling data in the country.<sup>178</sup>

However, Chadema said that some 94 percent of its candidates for local elections were disqualified, while claiming that 90 percent of CCM’s candidates were approved.<sup>179</sup> As a result, the opposition held a boycott of the November elections.<sup>180</sup> Responding to the opposition’s announced boycott, Local Government Minister Selemani Jafo declared a reversal of the

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<https://www.aljazeera.com/news/2020/06/tanzania-opposition-leader-attacked-months-elections-200609104715758.html>.

<sup>171</sup> Press Release, U.S. Emb. In Tanz., Statement of Concern about Attack Against Freeman Mbowe, Jun. 9, 2020, <https://tz.usembassy.gov/statement-of-concern-about-attack-against-freeman-mbowe/>

<sup>172</sup> *Id.*

<sup>173</sup> Morris Kiruga, *Tanzania: Opposition fear being locked out of October poll*, THE AFRICA REPORT (Aug. 17, 2020), <https://www.theafricareport.com/37705/tanzania-opposition-fear-being-locked-out-of-october-poll/>.

<sup>174</sup> Julius Mnganga, *Missing Finance ministry director found dead*, THE CITIZEN (Jul. 30, 2019), <https://www.thecitizen.co.tz/news/1840340-5215814-98um40/index.html>.

<sup>175</sup> Frank Kimboy, *Police insists senior Finance ministry official committed suicide*, THE CITIZEN (Jul. 31, 2019), <https://www.thecitizen.co.tz/news/1840340-5218042-98wiug/index.html>.

<sup>176</sup> *Tanzania to hold local elections amid opposition boycott*, AL JAZEERA, Nov. 23, 2019, <https://www.aljazeera.com/news/2019/11/tanzania-hold-local-elections-opposition-boycott-191123052345878.html>.

<sup>177</sup> *US, UK call Tanzania elections 'irregular, lacking credibility'*, AL JAZEERA (Nov. 27, 2019), <https://www.aljazeera.com/news/2019/11/uk-call-tanzania-elections-irregular-lacking-credibility-191127160231437.html>.

<sup>178</sup> Dan Paget, *Why Tanzania’s local elections are more important than they might seem*, AFRICAN ARGUMENTS (Nov. 15, 2019), <https://africanarguments.org/2019/11/15/why-tanzanias-local-elections-are-more-important-than-they-might-seem/>.

<sup>179</sup> AL JAZEERA, *supra* note 176.

<sup>180</sup> *Id.*

disqualifications of the opposition, pledging leniency for those opposition candidates initially disqualified.<sup>181</sup> Only a day passed, however, before Jafo reversed his reversal, rescinding the orders issued the previous day to allow disqualified candidates to run in the local elections. Jafo declared instead that only those accepted initially by election officers would be permitted to run and claimed his statement the previous day had been misunderstood.<sup>182</sup>

### III. 2020 ELECTIONS AND CAMPAIGN

On October 28, 2020, Tanzania will hold parliamentary and presidential elections. The number of presidential candidates is the highest in Tanzania's history,<sup>183</sup> with opposition leaders asserting that the government is using the unusually crowded field to its advantage in an effort to divide the vote among the opposition and prevent a re-run of the 2015 unified opposition under Ukawa.<sup>184</sup> ACT-Wazalema's Zitto Kabwe said many of the opposition candidates, who hail from little-known parties and enjoy very little support, are "stooges planted by CCM to create the misleading impression that democracy is flourishing in Tanzania."<sup>185</sup>

Chadema has been in talks with ACT-Wazalendo to find ways to work together without violating the 2019 amendments to the Political Parties Act which severely constrains the ability to form coalitions. The two parties have agreed to support a single candidate for the Zanzibar Presidency, Seif Sharif Hamad, who will be running for the Zanzibar presidency for the sixth time.<sup>186</sup> ACT-Wazalendo leader Zitto Kabwe said on October 4 that the two parties have suspended any announcement of cooperation over fears that the Registrar of Political Parties could take action. He noted, We want to be sure first that the decision will not cause legal disputes that could lead to deregistration of our political parties after the elections. We need to circumvent around the traps."<sup>187</sup>

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<sup>181</sup> BBC, *Tanzania drops plan to bar candidates in elections*, THE EAST AFRICAN (Nov. 9, 2019), <https://www.theeastafrican.co.ke/news/ea/Tanzania-drops-plan-to-bar-candidates-in-elections/4552908-5343286-7x8fd1z/index.html>.

<sup>182</sup> Khalifa Said, *Jafo in another election U-turn*, THE CITIZEN (Nov. 12, 2019), <https://www.thecitizen.co.tz/news/1840340-5345968-9ts0fo/index.html>.

<sup>183</sup> Louis Kolumbia, *Record list of Tanzania's presidential candidates for 2020 polls divides opinion*, THE CITIZEN (Aug. 14, 2020), <https://www.thecitizen.co.tz/news/Record-list-of-presidential-candidates-divides-opinion/1840340-5608852-ia17mmz/index.html>.

<sup>184</sup> Godfrey Kahango, *Missing Tanzanian opposition activist 'Mdude Chadema' found alive*, THE CITIZEN (May 9, 2019), <https://www.thecitizen.co.tz/news/Missing-Tanzanian-opposition-activist--Mdude-/1840340-5107026-oonvc7/index.html>

<sup>185</sup> Morris Kiruga, *Tanzania kicks off presidential campaign as Magufuli faces largest list ever of candidates*, THE AFRICA REPORT (Sep. 1, 2020), <https://www.theafricareport.com/39936/tanzania-kicks-off-presidential-campaign-as-magufuli-faces-largest-list-ever-of-candidates/>.

<sup>186</sup> Deogratius Kamagi, *Chadema Suspends Presidential Campaign*, TANZANIA DAILY NEWS (Oct. 5, 2020), <https://dailynews.co.tz/news/2020-10-055f7aac3f3db17.aspx>;

Seif Sharif Hamad, *Why I'm running for the Zanzibar presidency, again*, African Arguments (Jul. 1, 2020), <https://africanarguments.org/2020/07/01/why-im-running-for-the-zanzibar-presidency-again/>.

<sup>187</sup> Louis Kolumbia, *Chadema, ACT-Wazalendo cooperation delayed*, The Citizen (Oct. 4, 2020), <https://www.thecitizen.co.tz/news/---Chadema--ACT-cooperation-delayed/1840340-5629402-n8u3vsz/index.html>.



### A. Chadema Nominates Tundu Lissu

On August 3, 2020, Tundu Lissu was nominated by Chadema as its candidate for the presidency.<sup>188</sup> Before long, however, Lissu faced threats to his candidacy by the judiciary and the NEC. On August 26, 2020, Lissu was scheduled to appear before the NEC in Dodoma to officially register as a candidate for the presidential election, but the Kisutu Resident Magistrate's Court in Dar es Salaam ordered him to appear to face sedition charges on the same day.<sup>189</sup> Lissu opted to appear in Dodoma, and informed the court in Dar es Salaam that he would not be able to appear. The court ultimately rescheduled the hearing for September 24.<sup>190</sup>

### B. NEC Disqualifies Chadema Candidates and Suspends Lissu's Campaign

Chadema has said that 57 of its parliamentary candidates have already been rejected by the NEC.<sup>191</sup> Tundu Lissu declared, "This is unacceptable, and we demand the national electoral commission to play fairly and reinstate our candidates." For local council elections, Lissu said that 30 percent of the 3,754 candidates put forward by Chadema have been disqualified.<sup>192</sup>

The reasons cited by the NEC for the disqualifications are typically for extremely minor errors which, if the candidates did in fact make in filling out registration forms, could easily be resolved. Examples of such disqualifications on minor procedural grounds include Rhoda Kuchela, Chadema's chairperson for the Katavi region,<sup>193</sup> who was disqualified for allegedly writing the state in which she is running and her name in the wrong boxes on the form.<sup>194</sup> Many others have not been given an explanation for their disqualifications.<sup>195</sup>

Joseph Mbilinyi "Sugu," the Chadema MP and musician declared on September 1, 2020 that over 1,000 MPs and councilors have gathered in Dodoma to follow up on appeals made to the NEC over their rejected applications for the upcoming election.<sup>196</sup> On September 23, Chadema's Reginald Munisi wrote that over thirty-five days have passed since campaigning opened, but many of Chadema's candidates are still waiting on their appeal outcomes to the NEC.<sup>197</sup> NEC's

<sup>188</sup> Louis Kolumbia, *Chadema picks Tundu Lissu as Presidential candidate for 2020 polls*, THE CITIZEN (Aug. 3, 2020), <https://www.thecitizen.co.tz/news/Tundu-Lissu-nominated-as-Chadema-s-Presidential-candidate/1840340-5603530-n1ffejz/index.html>.

<sup>189</sup> Tanzania Daily News, *supra* note 134.

<sup>190</sup> Kolumbia, *supra* note 183.

<sup>191</sup> Associated Press, *Tanzania Opposition Parties Say Candidates Unfairly Rejected*, NEW YORK TIMES (Aug. 28, 2020), <https://www.nytimes.com/aponline/2020/08/28/world/africa/ap-af-tanzania-elections.html>.

<sup>192</sup> *Tanzanian opposition alleges irregularities in candidates' enrollment*, REUTERS (Aug. 28, 2020), <https://www.reuters.com/article/us-tanzania-elections-irregularities/tanzanian-opposition-alleges-irregularities-in-candidates-enrollment-idUSKBN25O2OS>.

<sup>193</sup> Mwananchi Digital, *Rhoda Kuchela Arudisha Fomu Ya Ubunge Jimbo La Mpanda Mjini [Rhoda Kuchela Returns MP Mpanda Urban Constituency Form]*, YOUTUBE (Jul. 9, 2020), <https://www.youtube.com/watch?v=gPLQLUDYIGI>.

<sup>194</sup> Wagombea Ubunge Waliowekewa Mappingamizi [Candidates for Parliamentary Submission] (on file with the author).

<sup>195</sup> *Id.*

<sup>196</sup> Global TV Online, *Bila Uwoga Sugu Ailipua Tume Ya Uchaguzi, Amtaja Katibu Wa Ccm, - "Amani Ya Nchi Ipo Mikononi Mwao" [Without Chronic Fear He Blasted the Electoral Commission, Citing the Example of the CCM Secretary, - "The Peace Of The Country Is In Their Hands"]*, YOUTUBE (Sep. 1, 2020), [https://www.youtube.com/watch?v=LkrDkjGZngg&feature=emb\\_title](https://www.youtube.com/watch?v=LkrDkjGZngg&feature=emb_title).

<sup>197</sup> The Citizen, *Tanzania: Opposition Cries Foul Over 'Unjustified' Eliminations*, ALL AFRICA (Sep. 23, 2020),

Director of Elections Wilson Mahera Charles refused to answer journalist questions about the delay in the appeals process, responding “Sorry, I can’t talk right now.”<sup>198</sup>

The Tanzania Political Parties Council (“**TPPC**”) has called on Magufuli to sack election supervisors who led “flagrantly unfair” nomination processes leading to hundreds of disqualifications of parliamentary and thousands of local council candidates.<sup>199</sup>

On August 10, the Inspector General of the Police (“**IGP**”) Simon Sirro warned candidates against “the use of inflammatory language that can incite violence during this election period.”<sup>200</sup> As one acute observer noted of Sirro’s remarks – and as events in October would demonstrate clearly:

While this might sound like a genuine and legitimate law and order call, these are the kind of blanket statements used to generally characterise all critical speech as an incitement to violence. The overall effect is that in an election season, where politicking and campaign messaging dominates the news cycle, policing political speech can have deleterious effects on the freeness and fairness of an election. This happens in two major ways: opposition politicians are arrested on trumped-up charges of inciting political violence, which derails campaigns in significant ways. At the same time, politicians are forced into self-censorship for fear of prosecution and/or persecution.<sup>201</sup>

Lissu has become the latest victim of these tactics to undermine opposition candidates, facing new questions from the NEC and the Registrar of Political Parties (“**RPP**”). Lissu expressed concern over reports that District Executive Directors (“**DEDS**”) had met with President Magufuli and were planning to rig elections. Lissu also urged citizens to ensure the integrity of the election. Wilson Charles declared that Lissu will be summoned to the NEC over his remarks, claiming that they debase the NEC and are therefore unacceptable.

Curiously, given Wilson Charles’ ostensible role as an impartial actor, the Director of Elections added, “You spend a lot of time announcing suspicions instead of policies, you spend a lot of time deceiving Tanzanians and workers...Tanzanians now want better roads, Tanzanians want electricity projects...Tanzanians do not want *bla bla*”<sup>202</sup> The RPP also claims that Lissu’s

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<https://allafrica.com/stories/202009230598.html>.

<sup>198</sup> *Id.*

<sup>199</sup> Louis Kolumbia, *Magufuli asked to sack election officials*, *The Citizen* (Sep. 26, 2020), <https://www.thecitizen.co.tz/news/Magufuli--asked-to-sack-election-officials/1840340-5627360-yyfg57z/index.html>.

<sup>200</sup> Tanzania is not ready for a free and fair election, *DAILY MAVERICK* (S. Afr.), (Oct. 4, 2020), <https://www.dailymaverick.co.za/article/2020-10-04-tanzania-is-not-ready-for-a-free-and-fair-election/>.

<sup>201</sup> *Id.*

<sup>202</sup> Mwandishi Wetu, *Bosi NEC amvaa Lissu ‘Watanzania hawataki bla bla’ [NEC boss tells Lissu ‘Tanzanians don’t want bla bla’]*, *MWANA HALISI ONLINE* (Sep. 28, 2020), <http://mwanahalisionline.com/bosi-nec-amvaa-lissu-watanzania-hawataki-bla-bla/>.

encouragement of citizens to mobilize to ensure the October polls are fair “threatens peace and security,” and has insisted that he answer questions about his remarks.<sup>203</sup>

A Chadema rally in Nyamongo was met by police unleashing tear gas on attendees.<sup>204</sup> On September 29, 2020, Wilson Charles doubled down on his threats, declaring that “we have been very patient, and the IGP [Simon Sirro] has been very patient, from now on you will be surprised people will be bombed where they have been told to stop going by the police. I think you saw yesterday they were bombed [tear-gassed] in Nyamongo.”<sup>205</sup> The IGP and the NEC claim that the tear-gassing took place because the rally was not in line with NEC directives.

On October 2, 2020, the NEC’s Ethics Committee declared that Tundu Lissu was banned from campaigning for seven days as punishment<sup>206</sup> for violating the General Election Code of Conduct of 2020 following complaints from the ruling CCM as well as the National Reconstruction Alliance Party (“NRA”).<sup>207</sup> On October 5, Chadema announced that it would comply with the ban,<sup>208</sup> fearing that non-compliance could be used as a pretext for further crackdowns on Chadema’s campaign with the election just weeks away. However, Chadema’s chairman Freeman Mbowe announced that the party will bring a legal challenge, remarking, “The party’s Central Committee has instructed our legal department to lodge a case immediate at the high court to challenge the suspension, we know that the judgement may not come out on time, but this is for records.”<sup>209</sup>

Another concern which has been raised by Tundu Lissu and other Chadema officials is the status of Chadema’s party agents and their ability to access polling stations, as dictated by law. Previous elections have seen attempts to limit the access to polling stations by authorized agents of Chadema and other opposition parties.<sup>210</sup> Another concern which has been borne out in previous elections are polling agents masquerading as Chadema representatives who are in fact acting in the service of the ruling CCM party.<sup>211</sup>

<sup>203</sup> Louis Kolumbia, *Lissu faces registrar, NEC over his remarks*, THE CITIZEN (Sep. 28, 2020), <https://www.thecitizen.co.tz/news/Lissu-faces-registrar--NEC-over-his-remarks/1840340-5627722-bpp71p/index.html>.

<sup>204</sup> Elizaberth Zaya, *Wafuasi CHADEMA wata watawanywa kwa mabomu [CHADEMA supporters will be bombed]*, IPP MEDIA (Sep. 29, 2020), <https://www.ippmedia.com/sw/habari/wafuasi-chadema-watawanywa-kwa-mabomu>

<sup>205</sup> Mwandishi Wetu, *Lissu aijibu NEC ‘ngoma hii hawaiwezi’ [Lissu responds to the NEC ‘they can’t do this dance]*, Mwanahalisi Online (Sep. 30, 2020), <http://mwanahalisionline.com/lissu-aijibu-nec-ngoma-hii-hawaiwezi/>.

<sup>206</sup> Louis Kolumbia, *NEC says Lissu must comply or face consequences*, THE CITIZEN (Oct. 5, 2020), <https://www.thecitizen.co.tz/news/NEC-says-Lissu-must-comply-or-face-consequences/1840340-5629414-136wxf1z/index.html>.

<sup>207</sup> Kamagi, *supra* note 186

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> See Peter Elias, *Our agents have been removed from polling stations, laments Chadema candidate*, THE CITIZEN (Nov. 26, 2017), <https://www.thecitizen.co.tz/news/Our-agents-have-been-removed-from-polling-stations-/1840340-4203226-format-xhtml-5blpixz/index.html>; Innocent Natali, *Monduli by-election: Chadema says will not boycott polls, results despite anomalies*, THE CITIZEN (Sep. 16, 2018), <https://www.thecitizen.co.tz/news/Chadema-says-will-not-boycott-polls--results-despite-anomalies/1840340-4762480-npnjof/index.html>.

<sup>211</sup> Conversation with Tundu Lissu, Sep, 26, 2020.

On September 17, 2020, the US Congress introduced a resolution recognizing of the importance of multi-party politics and calling for “all parties to respect human rights and constitutional rights and ensure free and fair elections in October 2020.”<sup>212</sup>

### C. Malawi Elections as a Warning

This year, Malawi became just the second African country to annul a nationwide presidential election, the first being Kenya in 2017.<sup>213</sup> In May 2019, the incumbent at the time, Peter Mutharika, was re-elected in a vote that was marred by irregularities and questionable behavior on the part of the Malawi Electoral Commission (“MEC”). Some of these irregularities included ballots that had been clearly tampered with correction fluid, and the MEC’s complete disregard for a litany of complaints filed in the run-up to the election. *The Economist* wrote that “it seemed a textbook case of rigging.”<sup>214</sup>

Mutharika took 38.5 per cent of the vote, compared with just over 35 per cent for Lazarus Chakwera, his closest competitor, while Mutharika’s former vice-president Saulos Chilima who also ran against him took 20 percent.<sup>215</sup> Chakwera called the election “daylight robbery.”<sup>216</sup>

Mass protests broke out in the summer of 2019 in response to the vote, widely viewed as having been unfair and fraudulent. Protesters demanded the resignation of the head of the MEC, Jane Ansah, and Chakwera and Chilima petitioned the constitutional court, demanding a re-vote.<sup>217</sup> Mutharika responded by banning protests and sending soldiers to the streets to enforce the ban.<sup>218</sup> Nevertheless, the constitutional court accepted the petition from the opposition candidates.

In January 2020, while the five justices on the constitutional court were having lunch in Lilongwe, Malawi’s capital, Judge President Healy Potawi received a call from Thom Mpinganjira, a wealthy businessman connected to the ruling party who offered to deliver a parcel filled with \$135,000 in an effort to bribe the justices of the constitutional court.<sup>219</sup> The judges decided amongst themselves to reject the offer and report Mpinganjira – a decision upon which “Malawi’s democratic future hinged.”<sup>220</sup>

<sup>212</sup> H.Res.1120 116<sup>th</sup> Cong. (2020).

<sup>213</sup> Fergus Kell, *Malawi’s Re-Run Election is Lesson for African Opposition*, CHATHAM HOUSE (Jul. 1, 2020), <https://www.chathamhouse.org/expert/comment/malawi-s-re-run-election-lesson-african-opposition#>.

<sup>214</sup> *Malawi’s re-run election is a victory for democracy*, THE ECONOMIST (Jul. 2, 2020), <https://www.economist.com/middle-east-and-africa/2020/07/02/malawis-re-run-election-is-a-victory-for-democracy>.

<sup>215</sup> Kim Yi Dionne & Boniface Dulani, *A Malawi court just ordered a do-over presidential election. Here’s what you need to know*, WASH. POST (Feb. 4, 2020), [https://www.washingtonpost.com/politics/2020/02/04/malawi-court-just-ordered-do-over-presidential-election-heres-what-you-need-know/?tid=ss\\_tw](https://www.washingtonpost.com/politics/2020/02/04/malawi-court-just-ordered-do-over-presidential-election-heres-what-you-need-know/?tid=ss_tw).

<sup>216</sup> Joseph Cotterill, *Malawi sends soldiers on to streets to uphold protest ban*, FIN. TIMES (Aug. 28, 2019), <https://www.ft.com/content/0a31c7fe-c9a3-11e9-a1f4-3669401ba76f>.

<sup>217</sup> Yi Dionne & Dulani, *supra* note 215.

<sup>218</sup> Cotterill, *supra* note 216.

<sup>219</sup> Golden Matonga, *Malawi’s top judges were offered bags of cash over lunch*, THE CONTINENT 28 (Jun. 6, 2020), <https://bucket.mg.co.za/wp-media/2020/06/9100092d-thecontinentissue8.pdf>.

<sup>220</sup> *Id.*

The next month, in February 2020, the constitutional court found that the May 2019 elections were marred by “widespread, systematic and grave” irregularities.<sup>221</sup> Illustrating the risks – and the stakes – of the decision, the five justices wore bulletproof vests under their robes while announcing the verdict.<sup>222</sup> The court ordered a new election be carried out within 150 days, and also ordered that the country’s first-past-the-post system of voting be replaced with one requiring an outright majority.<sup>223</sup> The election was set for June 23, 2020. Jane Ansah, the controversial head of the MEC who protesters demanded resign after the fraud that took place in the previous year’s election, resigned a month prior to the new vote.<sup>224</sup>

In a similar vein to the Ukawa coalition in the 2015 Tanzanian elections, Chakwera and Chilima led a new, nine-party coalition to contest the election, with Chakwera topping the ticket as candidate for president and Chilima as his running-mate.<sup>225</sup> The coalition, combined with rallies held across the country and a well-designed digital campaign, led the coalition to victory. Chakwera defeated Mutharika, taking 58 percent of the vote.<sup>226</sup>

#### IV. CONCLUSION

Following Tanzania’s political liberalization, there was much hope in the 1990s that the country was on an increasingly democratic trajectory with the implementation of competitive, multi-party elections.

Unfortunately, 2015 – when Tanzania saw the most competitive elections in the country’s history – has proven to be a turning point towards more blatant authoritarian measures. Opposition parties have not only found their legal avenues to electoral competitiveness quashed by unconstitutional orders such as the ban on political rallies and the 2019 amendments making the formation of coalitions more difficult. Members of the opposition have also found their lives in danger – most notably when Tundu Lissu faced an attack on his life in 2017, but far from an isolated incident – and Chadema candidates have faced disqualification, trumped-up charges, and harassment by the NEC, the police, and other organs of the state, while CCM candidates virtually never face such obstacles.

As academics and other observers have written long before 2015, it was an open question how the ruling CCM party would react to a serious challenge to its rule. Unfortunately, the answer appears to be taking the country in a more severe authoritarian direction, stifling free speech in the press and online, harassing and attacking members of the opposition, and disqualifying opposition challengers in elections *en masse*.

President Magufuli and the NEC must cease all intimidation of opposition candidates, ensure that Chadema’s polling agents are permitted to observe polling stations as permitted by law, and

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<sup>221</sup> Kell, *supra* note 213.

<sup>222</sup> Matonga, *supra* note 219,

<sup>223</sup> Kell, *supra* note 213.

<sup>224</sup> Lameck Masina, *Malawi Electoral Commission Chairperson Resigns*, VOA (May 22, 2020), <https://www.voanews.com/africa/malawi-electoral-commission-chairperson-resigns>.

<sup>225</sup> *Id.*

<sup>226</sup> Malawi presidential election: Lazarus Chakwera declared winner, Al Jazeera (Jun. 27, 2020), <https://www.aljazeera.com/news/2020/6/27/malawi-presidential-election-lazarus-chakwera-declared-winner>.

the NEC must immediately approve those opposition candidates who were disqualified on outrageous pretexts and continue to wait on the appeals process, which the NEC is intentionally dragging out. The safety and continued candidacy of Tundu Lissu must also be upheld, who has faced both threats to his life and continuing attempts to disqualify his candidacy for president.

The suspension of the Chadema campaign – announced by the NEC on October 4, 2020 – coupled with ongoing reports of NEC harassment, intimidation, and illegal disqualification mean that there is no hope for a fair and free election in 2020. In spite of this, the opposition will continue to fight for justice and freedom, and as international counsel to candidate Lissu, we will continue to support his efforts in every way that we can.

Much has been made of the possibility of Magnitsky-style sanctions against those involved in structuring CCM's illegal election conduct, and we wish to stress that these types of Magnitsky sanctions are not levelled at the country as a whole, but rather at the individuals involved in this illegal conduct. The people of Tanzania, therefore, are not without a remedy. Thanks to recent changes in international law, their legitimate desire to exercise political control over their future will, we hope, ultimately be honored.